Appendix I

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AUG 16 2010

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By Deputy



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August 16, 2010

Via Hand Delivery and Electronic Filing

Honorable Wallace B. Jefferson Chief Justice Texas Supreme Court Supreme Court Building 201 West 14th, Room 104 Austin, Texas 78701

Re: Inquiry Concerning Judge No. 96, The Honorable Sharon Keller

Dear Chief Justice Jefferson:

As you know, I represent Judge Sharon Keller, the Presiding Judge of the Texas Court of Criminal Appeals, in a formal proceeding brought against her by the State Commission on Judicial Conduct (the "Commission"). In April of 2009, at the request of the Commission, Your Honor's Court appointed a Special Master to receive evidence and make findings of fact in the formal proceeding. After a four-day trial in August of 2009, the Honorable David Berchelmann, Jr., your appointed Special Master, made detailed findings of fact, including findings that Judge Keller "did not violate any written or unwritten rules or laws," that she should not be sanctioned, and that the public outery against her was largely the product of a series of fabrications peddled to the press by the Texas Defender Service. The Examiner and Special Counsel, who himself was one of the persons who filed a complaint with the Commission, objected to Judge Berchelmann's findings, and the Commission conducted a hearing this past June in which it specifically declined to receive additional evidence.

Following the hearing, on July 16, 2010, the Commission entered its Findings, Conclusions, and Order of Public Warning (the "Order"). In the Order, the Commission made its own findings which completely ignored those of Judge Berchelmann and, in fact, referred to those findings as mere "observations." Based on its new findings, the Commission issued a "public warning" against Judge Keller, which it said was authorized by Article 5, Section 1-a(8) of the Texas Constitution. Contrary to the Commission's Order, Article 5, Section 1-a(8) does not authorize the issuance of a public warning against a judge. The Constitution plainly states that, once the Commission initiates formal proceedings, as it did against Judge Keller, a public warning is foreclosed and the Commission may only dismiss the charges, issue a censure, or recommend removal of the judge:

If, after formal hearing, or after considering the record and report of a Master, the Commission finds good cause therefor, it shall issue an order of public

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censure or it shall recommend to a review tribunal the removal or retirement, as the case may be of the person in question

TEX. CONST. art. 5, § 1-a(8) (emphasis added).

Judge Keller wishes to challenge the Commission's Order. To that end, on July 29, 2010, she filed a Petition for a Writ of Mandamus in your Court and moved for an emergency stay of the Order, which the Court denied today.

In light of the Court's action today, Judge Keller is asking Your Honor, pursuant to Section 33.034(b) of the Texas Government Code, to appoint justices either for a trial de novo or for an appellate-like review based on the trial record. See Tex. Gov't Code § 33.034(e). As she pointed out in her Mandamus Petition and Emergency Motion to Stay, there is no de novo review from a formal proceeding, but there is also no appellate-like review of a public warning. Judge Keller has had a trial, at which she prevailed, and should not be put to the expense of a new trial. In her public statements to the press, the Commission's Executive Director has agreed that a new trial would be a "waste of resources." A new trial would also mean that this Court's appointment of Judge Berchelmann as Special Master, and the time and effort he expended holding the hearing and drafting his Findings of Fact, all would be wasted.

This is to advise Your Honor and the Court that Judge Keller wishes to avail herself of her right to oppose the Commission's unconstitutional behavior in whatever forum you deem appropriate. She frankly does not know what that is, and is frustrated by the fact that it is the Commission's unconstitutional Order which has created this conundrum. In writing this letter she does not waive any rights and makes this request subject to the arguments found in her Mandamus Petition and Motion to Stay.

Accordingly, The Honorable Sharon Keller, Presiding Judge of the Texas Court of Criminal Appeals, requests the appointment of a special court to review the July 16, 2010, Order of the Commission entered in *Inquiry Concerning Honorable Sharon Keller*, Judge No. 96. This request is made pursuant to Section 33.034 of the Texas Government Code. She also asks that you give notice to the parties as to which appellate standard we are operating under and further, in light of today's ruling, explicitly state that the special court should consider the constitutionality of the Order.

Clarks £. S.M.

Charles L. Babcock

Mr. John J. (Mike) McKetta, III Graves Dougherty Hearon & Moody 401 Congress Avenue, Suite 2200 Austin, Texas 78701

cc;

Via E-Mail

Ms. Seana Willing
Executive Director
State Commission on Judicial Conduct
300 West 15th Street, Suite 415
Austin, Texas 78701

Via E-Mail

Appendix J



The Supreme Court of Texas

CHIEF JUSTICE WALLACE B. JEFFERSON

JUSTICES
NATHAN L. HECHT
DALE WAINWRIGHT
DAVID M. MEDINA
PAUL W. GREEN
PHIL JOHNSON
DON R. WILLETT
EVA M. GUZMAN
DEBRA H. LEHRMANN

201 West 14th Street Post Office Box 12248 Austin TX 78711 Telephone: 512/463-1312 Facsimile: 512/463-1365 CLERK BLAKE A. HAWTHORNE

GENERAL COUNSEL ALICE MCAFEE

ADMINISTRATIVE ASSISTANT NADINE SCHNEIDER

PUBLIC INFORMATION OFFICER OSLER McCARTHY

August 18, 2010

The Honorable Terrie Livingston Second Court of Appeals Tarrant County Justice Center 401 West Belknap, Suite 9000 Fort Worth, Texas 76196 The Honorable Charles Kreger Ninth Court of Appeals 1001 Pearl Street, Ste. 330 Beaumont, Texas 77701-3552

The Honorable Elsa Alcala First Court of Appeals 1307 San Jacinto Street, 10th Floor Houston, Texas 77002-7018

Dear Chief Justice and Justices:

On July 16, 2010, the State Commission on Judicial Conduct issued its decision in the following proceeding relating to the Honorable Sharon Keller, Presiding Judge of the Court of Criminal Appeals:

Inquiry Concerning Judge No. 96

Pursuant to Texas Government Code Section 33.034, Judge Keller requests appointment of a Special Court of Review. Pursuant to subsection (c) of 33.034, I have selected your names by lot and you are hereby assigned to hear this matter. Chief Justice Livingston is designated to preside. The Clerk of the Supreme Court of Texas serves as the clerk for these proceedings. A copy of section 33.034 is enclosed for your information.

Sincerely,

Wallace B. Jefferson

Chief Justice

WBJ/AM/dg Enclosure

cc: Mr. Charles L. Babcock

Ms. Seana Willing

Mr. John J. (Mike) McKetta, III

(2) information relating to requesting reconsideration of the dismissed complaint as provided by Sections 33.035(a) and (f).

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 486, Sec. 3, eff. Aug. 31, 1987; Acts 1999, 76th Leg., ch. 462, Sec. 17, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 917, Sec. 16, eff. Sept. 1, 2001.

Sec. 33.034. REVIEW OF COMMISSION DECISION. (a) A judge who receives from the commission any type of sanction, or a censure issued by the commission under Section 1-a(8), Article V, Texas Constitution, is entitled to a review of the commission's decision as provided by this section. This section does not apply to a decision by the commission to institute formal proceedings.

- (b) Not later than the 30th day after the date on which the commission issues its decision, the judge must file with the chief justice of the supreme court a written request for appointment of a special court of review.
- (c) Not later than the 10th day after the chief justice receives the written request, the chief justice shall select by lot the court of review. The court of review is composed of three court of appeals justices, other than a justice serving in a court of appeals district in which the judge petitioning for review of the commission's order serves and other than a justice serving on the commission. The chief justice shall notify the petitioner and the commission of the identities of the justices appointed to the court and of the date of their appointment. Service on the court shall be considered a part of the official duties of a justice, and no additional compensation may be paid for the service.
- (d) Within 15 days after the appointment of the court of review, the commission shall file with the clerk a charging document that includes, as applicable, a copy of the censure or sanction issued and any additional charges to be considered by the court of review. The charging document is public on its filing with the clerk. On receipt of the filing of the charging document, the clerk shall send the charging document to the judge who is the subject of the document and to each justice on the court of review.

- (e) The review by the court under this section:
- (1) of a censure is a review of the record of the proceedings that resulted in the censure and is based on the law and facts that were presented in the proceedings and any additional evidence that the court in its discretion may, for good cause shown, permit; and
- (2) of a sanction is by trial de novo as that term is used in the appeal of cases from justice to county court.
- (e-1) Any hearings of the court shall be public and shall be held at the location determined by the court. Any evidence introduced during a hearing, including papers, records, documents, and pleadings filed with the clerk in the proceedings, is public.
- (f) Except as otherwise provided by this section, the procedure for the review of a sanction is governed to the extent practicable by the rules of law, evidence, and procedure that apply to the trial of civil actions generally.
- (g) A judge is not entitled to a trial by jury in a review of a sanction under this section.
- (h) Within 30 days after the date on which the charging document is filed with the clerk, the court shall conduct a hearing on the charging document. The court may, if good cause is shown, grant one or more continuances not to exceed a total of 60 days. Within 60 days after the hearing, the court shall issue a decision as to the proper disposition of the appeal.
- (i) The court's decision under this section is not appealable.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 47, Sec. 2, eff. Oct. 20, 1987. Amended by Acts 1999, 76th Leg., ch. 462, Sec. 18, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 917, Sec. 17, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 805, Sec. 2, eff. June 19, 2009.

Sec. 33.035. RECONSIDERATION OF COMPLAINT. (a) A complainant may request reconsideration of a dismissed complaint if, not later than the 30th day after the date of the communication

Appendix K

PROCEDURAL RULES FOR THE REMOVAL OR RETIREMENT OF JUDGES

(Adopted and Promulgated Pursuant to Article V, Section 1-a(11), Texas Constitution)

RULE 1. DEFINITIONS

In these rules, unless the context or subject matter otherwise requires:

- (a) "Commission" means the State Commission on Judicial Conduct.
- (b) "Judge" means any Justice or Judge of the Appellate Courts and District and Criminal District Courts; any County Judge; any Judge of a County Court-at-Law, a Probate Court, or a Municipal Court; any Justice of the Peace; any Judge or presiding officer of any special court created by the Legislature; any retired judge or former judge who continues as a judicial officer subject to assignment to sit on any court of the state; and, any Master or Magistrate appointed to serve a trial court of this state.
 - (c) "Chairman" includes the acting Chairman of the Commission.
- (d) "Special Master" means an individual appointed by the Supreme Court upon request of the Commission pursuant to Article V, Section 1-a, Paragraph (8) of the Texas Constitution.
- (e) "Sanction" means any admonition, warning, reprimand, or requirement that the person obtain additional training or education, issued publicly or privately, by the Commission pursuant to the provisions of Article V, Section 1-a, Paragraph (8) of the Texas Constitution. A sanction is remedial in nature. It is issued prior to the institution of formal proceedings to deter similar misconduct by a judge or judges in the future, to promote proper administration of justice, and to reassure the public that the judicial system of this state neither permits nor condones misconduct.
- (f) "Censure" means an order issued by the Commission pursuant to the provisions of Article V, Section 1-a, Paragraph (8) of the Texas Constitution or an order issued by a Review Tribunal pursuant to the provisions of Article V, Section 1-a, Paragraph (9) of the Texas Constitution. An order of censure is tantamount to denunciation of the offending conduct, and is more severe than the remedial sanctions issued prior to a formal hearing.
- (g) "Special Court of Review" means a panel of three court of appeals justices selected by lot by the Chief Justice of the Supreme Court upon petition, to review a sanction issued by the Commission.
- (h) "Review Tribunal" means a panel of seven court of appeals justices selected by lot by the Chief Justice of the Supreme Court to review the Commission's recommendation for the removal or retirement of a judge as provided in Article V, Section 1-a, Paragraph (8) of the Texas Constitution.

- (i) "Formal Proceeding" means the proceedings ordered by the Commission concerning the possibility of public censure, removal, or retirement of a judge.
- (j) "Examiner" means the person, including appropriate Commission staff or Special Counsel, appointed by the Commission to gather and present evidence before a special master, or the Commission, a Special Court of Review or a Review Tribunal.
 - (k) "Shall" is mandatory and "may" is permissive.
 - (I) "Mail" means First Class United States Mail.
 - (m) The masculine gender includes the feminine gender.

RULE 2. MAILING OF NOTICES AND OF OTHER MATTER

Whenever these rules provide for giving notice or sending any matter to a judge, the same shall, unless otherwise expressly provided by the rules or requested in writing by the judge, be sent to him by mail at his office or last known place of residence; provided, that when the judge has a guardian or guardian ad litem, the notice or matter shall be sent to the guardian or guardian ad litem by mail at his office or last known place of residence.

RULE 3. PRELIMINARY INVESTIGATION

- (a) The Commission may, upon receipt of a verified statement, upon its own motion, or otherwise, make such preliminary investigation as is appropriate to the circumstances relating to an allegation or appearance of misconduct or disability of any judge to determine that such allegation or appearance is neither unfounded nor frivolous.
- (b) If the preliminary investigation discloses that the allegation or appearance is unfounded or frivolous, the Commission shall terminate further proceedings.

RULE 4. FULL INVESTIGATION

- (a) If the preliminary investigation discloses that the allegations or appearances are neither unfounded nor frivolous, or if sufficient cause exists to warrant full inquiry into the facts and circumstances indicating that a judge may be guilty of willful or persistent conduct which is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or the administration of justice, or that he has a disability seriously interfering with the performance of his duties, which is, or is likely to become, permanent in nature, the Commission shall conduct a full investigation into the matter.
- (b) The Commission shall inform the judge in writing that an investigation has commenced and of the nature of the matters being investigated.
- (c) The Commission may request the judge's response in writing to the matters being investigated.

RULE 5. ISSUANCE, SERVICE, AND RETURN OF SUBPOENAS

(a) In conducting an investigation, hearing, or other proceeding, the Chairman or any member of the Commission, or a special master when a hearing is being conducted before a special master, may, on his own motion, or on request of appropriate Commission staff, the examiner, or the judge, issue a subpoena for attendance of any witness or witnesses who may be represented to reside within the State of Texas.

- (b) The style of the subpoena shall be "The State of Texas". It shall state the style of the proceeding, that the proceeding is pending before the Commission, the time and place at which the witness is required to appear, and the person or official body at whose instance the witness is summoned. It shall be signed by the Chairman or some other member of the Commission, or by the special master when a hearing is before the special master, and the date of its issuance shall be noted thereon. It shall be addressed to any peace officer of the State of Texas or to a person designated by the Chairman to make service thereof.
- (c) A subpoena may also command the person to whom it is directed to produce the books, papers, documents or tangible things designated therein.
- (d) Subpoenas may be executed and returned at any time, and shall be served by delivering a copy of such subpoena to the witness; the person serving the subpoena shall make due return thereof, showing the time and manner of service, or service thereof may be accepted by any witness by a written memorandum, signed by such witness, attached to the subpoena.

RULE 6. INFORMAL APPEARANCE

- (a) Before terminating an investigation, the Commission may offer a judge an opportunity to appear informally before the Commission.
- (b) An informal appearance is confidential except that the judge may elect to have the appearance open to the public or to any person or persons designated by the judge. The right to an open appearance does not preclude placing of witnesses under the rule as provided by Rule 267 of the Texas Rules of Civil Procedure.
- (c) No oral testimony other than the judge's shall be received during an informal appearance, although documentary evidence may be received. Testimony of the judge shall be under oath, and a recording of such testimony taken. A copy of such recording shall be furnished to the judge upon request.
 - (d) The judge may be represented by counsel at the informal appearance.
- (e) Notice of the opportunity to appear informally before the Commission shall be given by mail at least ten (10) days prior to the date of the scheduled appearance.

RULE 7. RESERVED FOR FUTURE PROMULGATION

RULE 8. RESERVED FOR FUTURE PROMULGATION

RULE 9. REVIEW OF COMMISSION DECISION

- (a) A judge who has received from the Commission a sanction in connection with a complaint filed subsequent to September 1, 1987, may file with the Chief Justice of the Supreme Court a written request for appointment of a Special Court of Review, not later than the 30th day after the date on which the Commission issued its sanction.
- (b) Within 15 days after appointment of the Special Court of Review, the Commission shall furnish the petitioner and each justice on the Special Court of Review a charging document which shall include a copy of the sanction issued as well as any additional charges to be considered in the de novo proceeding and the papers, documents, records, and evidence

upon which the Commission based its decision. The sanction and other records filed with the Special Court of Review are public information upon filing with the Court.

- (c) Within 30 days after the date upon which the Commission files the charging document and related materials with the Special Court of Review, the Special Court of Review shall conduct a hearing. The procedure for the hearing shall be governed by the rules of law, evidence, and procedure that apply to civil actions, except the judge is not entitled to trial by jury, and the Special Court of Review's decision shall not be appealable. The hearing shall be held at a location determined by the Special Court of Review, and shall be public.
- (d) Decision by the Special Court of Review may include dismissal, affirmation of the Commission's decision, imposition of a lesser or greater sanction, or order to the Commission to file formal proceedings.
- (e) The opinion by the Special Court of Review shall be published if, in the judgment of a majority of the justices participating in the decision, it is one that (1) establishes a new rule of ethics or law, alters or modifies an existing rule, or applies an existing rule to a novel fact situation likely to recur in future cases; (2) involves a legal or ethical issue of continuing public interest; (3) criticizes existing legal or ethical principles; or (4) resolves an apparent conflict of authority. A concurring or dissenting opinion may be published if, in the judgment of its author, it meets one of the above indicated criteria, but in such event the majority opinion shall be published as well.

RULE 10. FORMAL PROCEEDINGS

(a) NOTICE

(1) If after the investigation has been completed the Commission concludes that formal proceedings should be instituted, the matter shall be entered in a docket to be kept for that purpose and written notice of the institution of formal proceedings shall be issued to the judge without delay. Such proceedings shall be entitled:

"Before the	State	Commission	on	Judicial	Conduct	Inquiry	Concerning	а
Judge, No.	5 -	H			1.42			

- (2) The notice shall specify in ordinary and concise language the charges against the judge, and the alleged facts upon which such charges are based and the specific standards contended to have been violated, and shall advise the judge of his right to file a written answer to the charges against him within 15 days after service of the notice upon him.
- (3) The notice shall be served by personal service of a copy thereof upon the judge by a member of the Commission or by some person designated by the Chairman, and the person serving the notice shall promptly notify the Commission in writing of the date on which the same was served. If it appears to the Chairman upon affidavit that, after reasonable effort during a period of 10 days, personal service could not be had, service may be made by mailing, by registered or certified mail, copies of the notice addressed to the judge at his chambers and at his last known residence, and the date of mailing shall be entered in the docket.

(b) ANSWER

Within 15 days after service of the notice of formal proceedings, the judge may file with the Commission an original answer, which shall be verified, and twelve legible copies thereof.

- (c) SETTING DATE FOR HEARING AND REQUEST FOR APPOINTMENT OF A SPECIAL MASTER
- (1) Upon the filing of an answer or upon expiration of the time for its filing, the Commission shall set a time and place for hearing before itself or before a special master and shall give notice of such hearing by mail to the judge at least 20 days prior to the date set.
- (2) If the Commission directs that the hearing be before a special master, the Commission shall, when it sets a time and place for the hearing, transmit a written request to the Supreme Court to appoint a special master for such hearing, and the Supreme Court shall, within 10 days from receipt of such request, appoint an active or retired District Judge, a Judge of a Court of Civil Appeals, either active or retired, or a retired Justice of the Court of Criminal Appeals or Supreme Court to hear and take evidence in such matters.

(d) HEARING

- (1) At the time and place set for hearing, the Commission, or the special master when the hearing is before a special master, shall proceed with the hearing as nearly as may be according to the rules of procedure governing the trial of civil causes in this State, subject to the provisions of Rule 5, whether or not the judge has filed an answer or appears at the hearing. The examiner or other authorized officer shall present the case in support of the charges in the notice of formal proceedings.
- (2) The failure of the judge to answer or to appear at the hearing shall not, standing alone, be taken as evidence of the truth of the facts alleged to constitute grounds for removal or retirement. The failure of the judge to testify in his own behalf or his failure to submit to a medical examination requested by the Commission or the master may be considered, unless it appears that such failure was due to circumstances unrelated to the facts in issue at the hearing.
- (3) The proceedings at the hearing shall be reported by a phonographic reporter or by some qualified person appointed by the Commission and taking the oath of an official court reporter.
- (4) When the hearing is before the Commission, not less than six members shall be present while the hearing is in active progress. The Chairman, when present, the Vice-Chairman in the absence of the Chairman, or the member designated by the Chairman in the absence of both, shall preside. Procedural and other interlocutory rulings shall be made by the person presiding and shall be taken as consented to by the other members unless one or more calls for a vote, in which latter event such rulings shall be made by a majority vote of those present.

(e) EVIDENCE

At a hearing before the Commission or a special master, legal evidence only shall be received as in the trial of civil cases, except upon consent evidenced by absence of objection, and oral evidence shall be taken only on oath or affirmation.

(f) AMENDMENTS TO NOTICE OR ANSWER

The special master, at any time prior to the conclusion of the hearing, or the Commission, at any time prior to its determination, may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the judge shall be given reasonable time both to answer the amendment and to prepare and present his defense against the matters charged thereby.

(g) PROCEDURAL RIGHTS OF JUDGES

- (1) In the proceedings for his removal or retirement a judge shall have the right to be confronted by his accusers, the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. He shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, papers and other evidentiary matter.
- (2) When a transcript of the testimony has been prepared at the expense of the Commission, a copy thereof shall, upon request, be available for use by the judge and his counsel in connection with the proceedings, or the judge may arrange to procure a copy at his expense. The judge shall have the right, without any order or approval, to have all or any portion of the testimony in the proceedings transcribed at his expense.
- (3) If the judge is adjudged insane or incompetent, or if it appears to the Commission at any time during the proceedings that he is not competent to act for himself, the Commission shall appoint a guardian ad litem unless the judge has a guardian who will represent him. In the appointment of a guardian ad litem, preference shall be given, so far as practicable, to members of the judge's immediate family. The guardian or guardian ad litem may claim and exercise any right and privilege and make any defense for the judge with the same force and effect as if claimed, exercised, or made by the judge, if competent.

(h) REPORT OF SPECIAL MASTER

- (1) After the conclusion of the hearing before a special master, he shall promptly prepare and transmit to the Commission a report which shall contain a brief statement of the proceedings had and his findings of fact based on a preponderance of the evidence with respect to the issues presented by the notice of formal proceedings and the answer thereto, or if there be no answer, his findings of fact with respect to the allegations in the notice of formal proceedings. The report shall be accompanied by an original and two copies of a transcript of the proceedings before the special master.
- (2) Upon receiving the report of the special master, the Commission shall promptly send a copy to the judge, and one copy of the transcript shall be retained for the judge's use.

(i) OBJECTIONS TO REPORT OF SPECIAL MASTER

Within 15 days after mailing of the copy of the special master's report to the judge, the examiner or the judge may file with the Commission an original and twelve legible copies of a statement of objections to the report of the special master, setting forth all objections to the report and all reasons in opposition to the findings as sufficient grounds for removal or retirement. A copy of any such statement filed by the examiner shall be sent to the judge.

(j) APPEARANCE BEFORE COMMISSION

If no statement of objections to the report of the special master is filed within the time provided, the findings of the special master may be deemed as agreed to, and the Commission may adopt them without a hearing. If a statement of objections is filed, or if the Commission in the absence of such statement proposes to modify or reject the findings of the special master, the Commission shall give the judge and the examiner an opportunity to be heard orally before the Commission, and written notice of the time and place of such hearing shall be sent to the judge at least ten days prior thereto.

(k) EXTENSION OF TIME

The Chairman of the Commission may extend for periods not to exceed 30 days in the aggregate the time for filing an answer, for the commencement of a hearing before the Commission, and for filing a statement of objections to the report of a special master, and a special master may similarly extend the time for the commencement of a hearing before him.

(I) HEARING ADDITIONAL EVIDENCE

- (1) The Commission may order a hearing for the taking of additional evidence at any time while the matter is pending before it. The order shall set the time and place of hearing and shall indicate the matters on which the evidence is to be taken. A copy of such order shall be sent to the judge at least ten days prior to the date of the hearing.
- (2) The hearing of additional evidence may be before the Commission itself or before the special master, as the Commission shall direct; and if before a special master, the proceedings shall be in conformance with the provisions of Rule 10(d) to 10(g) inclusive.

(m) COMMISSION VOTE

If, after hearing, upon considering the record and report of the special master, the Commission finds good cause therefore, by affirmative vote of six of its members, it shall recommend to the Review Tribunal the removal, or retirement, as the case may be; or in the alternative, the Commission may dismiss the case or publicly order a censure, reprimand, warning, or admonition. Six votes are required for a recommendation of removal or retirement.

RULE 11. REQUEST BY COMMISSION FOR APPOINTMENT OF REVIEW TRIBUNAL

Upon making a determination to recommend the removal or retirement of a judge, the Commission shall promptly file a copy of a request for appointment of a Review Tribunal with the clerk of the Supreme Court, and shall immediately send the judge notice of such filing.

RULE 12. REVIEW OF FORMAL PROCEEDINGS

(a) A recommendation of the Commission for the removal or retirement, of a judge shall be determined by a Review Tribunal of seven Justices selected from the Courts of Appeals. Members of the Review Tribunal shall be selected by lot by the Chief Justice of the Supreme Court from all Appeals Justices sitting at the time of selection. Each Court of Appeals shall designate one of its members for inclusion in the list from which the selection is made, except that no Justice who is a member of the Commission shall serve on the Review Tribunal. The

Justice whose name is drawn first shall be chairman of the Review Tribunal. The clerk of the Supreme Court will serve as the Review Tribunal's staff, and will notify the Commission when selection of the Review Tribunal is complete.

- (b) After receipt of notice that the Review Tribunal has been constituted, the Commission shall promptly file a copy of its recommendation certified by the Chairman or Secretary of the Commission, together with the transcript and the findings and conclusions, with the clerk of the Supreme Court. The Commission shall immediately send the judge notice of such filing and a copy of the recommendation, findings and conclusions.
- (c) A petition to reject the recommendation of the Commission for removal or retirement of a judge or justice may be filed with the clerk of the Supreme Court within thirty days after the filing with the clerk of the Supreme Court of a certified copy of the Commission's recommendation. The petition shall be verified, shall be based on the record, shall specify the grounds relied on and shall be accompanied by seven copies of petitioner's brief and proof of service of one copy of the petition and of the brief on the Chairman of the Commission. Within twenty days after the filing of the petition and supporting brief, the Commission shall file seven copies of the Commission's brief, and shall serve a copy thereof on the judge.
- (d) Failure to file a petition within the time provided may be deemed a consent to a determination on the merits based upon the record filed by the Commission.
- (e) Rules 4 and 74, Texas Rules of Appellate Procedure, shall govern the form and contents of briefs except where express provision is made to the contrary or where the application of a particular rule would be clearly impracticable, inappropriate, or inconsistent.
- (f) The Review Tribunal, may, in its discretion and for good cause shown, permit the introduction of additional evidence, and may direct that the same be introduced before the special master or the Commission and be filed as a part of the record in the Court.
- (g) Oral argument on a petition of a judge to reject a recommendation of the Commission shall, upon receipt of the petition, be set on a date not less than thirty days nor more than forty days from the date of receipt thereof. The order and length of time of argument shall, if not otherwise ordered or permitted by the Review Tribunal, be governed by Rule 172, Texas Rules of Appellate Procedure.
- (h) Within 90 days after the date on which the record is filed with the Review Tribunal, it shall order public censure, retirement, or removal, as it finds just and proper, or wholly reject the recommendation. The Review Tribunal, in an order for involuntary retirement for disability or an order for removal, may also prohibit such person from holding judicial office in the future.
- (i) The opinion by the Review Tribunal shall be published if, in the judgment of a majority of the justices participating in the decision, it is one that (1) establishes a new rule of ethics or law, alters or modifies an existing rule, or applies an existing rule to a novel fact situation likely to recur in future cases; (2) involves a legal or ethical issue of continuing public interest; (3) criticizes existing legal or ethical principles; or (4) resolves an apparent conflict of authority. A concurring or dissenting opinion may be published if, in the judgment of its author, it meets one of the above indicated criteria, but in such event the majority opinion shall be published as well.

RULE 13. APPEAL TO SUPREME COURT

A judge may appeal a decision of the Review Tribunal to the Supreme Court under the substantial evidence rule.

RULE 14. MOTION FOR REHEARING

A motion for rehearing may not be filed as a matter of right. In entering its judgment the Supreme Court or Review Tribunal may direct that no motion for rehearing will be entertained, in which event the judgment will be final on the day and date of its entry. If the Supreme Court or Review Tribunal does not so direct and the judge wishes to file a motion for rehearing, he shall present the motion together with a motion for leave to file the same to the clerk of the Supreme Court or Review Tribunal within fifteen days of the date of the judgment, and the clerk shall transmit it to the Court or Review Tribunal for such action as the appropriate body deems proper.

RULE 15. SUSPENSION OF A JUDGE

- (a) Any judge may be suspended from office with or without pay by the Commission immediately upon being indicted by a state or federal grand jury for a felony offense or charged with a misdemeanor involving official misconduct. However, the suspended judge has the right to a post-suspension hearing to demonstrate that continued service would not jeopardize the interests of parties involved in court proceedings over which the judge would preside nor impair public confidence in the judiciary. A written request for a post-suspension hearing must be filed with the Commission within 30 days from receipt of the Order of Suspension. Within 30 days from the receipt of a request, a hearing will be scheduled before one or more members or the executive director of the Commission as designated by the Chairman of the Commission. The person or persons designated will report findings and make recommendations, and within 60 days from the close of the hearing, the Commission shall notify the judge whether the suspension will be continued, terminated, or modified.
- (b) Upon the filing with the Commission of a sworn complaint charging a person holding such office with willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of office, willful violation of the Code of Judicial Conduct, or willful and persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or the administration of justice, the Commission, after giving the person notice and an opportunity to appear and be heard before the Commission (under Rule 6), may recommend to the Supreme Court the suspension of such person from office.
- (c) When the Commission or the Supreme Court orders the suspension of a judge or justice, with or without pay, the appropriate city, county, and/or state officials shall be notified of such suspension by certified copy of such order.

RULE 16. RECORD OF COMMISSION PROCEEDINGS

The Commission shall keep a record of all informal appearances and formal proceedings concerning a judge. In all proceedings resulting in a recommendation to the Review Tribunal for removal or retirement, the Commission shall prepare a transcript of the evidence and of all

proceedings therein and shall make written findings of fact and conclusions of law with respect to the issues of fact and law in the proceeding.

RULE 17. CONFIDENTIALITY AND PRIVILEGE OF PROCEEDINGS

All papers filed with and proceedings before the Commission shall be confidential, and the filing of papers with, and the giving of testimony before the Commission shall be privileged; provided that:

- (a) The formal hearing, and all papers, records, documents, and other evidence introduced during the formal hearing shall be public.
- (b) If the Commission issues a public sanction, all papers, documents, evidence, and records considered by the Commission or forwarded to the Commission by its staff and related to the sanction shall be public.
 - (c) The judge may elect to open the informal appearance hearing pursuant to Rule 6(b).

RULE 18. EXPARTE CONTACTS BY MEMBERS OF THE COMMISSION

A Commissioner, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider *ex parte* contacts with any judge who is the subject of an investigation being conducted by the Commission or involved in a proceeding before the Commission

Appendix L

From: Bob Warneke [mailto:Bob.Warneke@SCJC.state.tx.us]

Sent: Friday, June 11, 2010 1:58 PM **To:** Patrick, Amanda Zimmerman

Cc: mmcketta@gdhm.com; MAlcala@gdhm.com; Babcock, Chip; Schwarz, Kurt

Subject: RE: Judge No. 96 - Recusal

Amanda and all,

Our Commission members continue to serve until replaced by their respective appointing authorities. In the case of Ms. Bradford and Mr. Lawrence, it is the Governor. In the case of Judge Fields, it is the Texas Supreme Court.

Seana Willing (who is out on business today) would likely know more than I do on the subject, but I believe I'm correct in saying that Art. 16, §17 of the Texas Const. is helpful in explaining the situation.

Bob Warneke Commission Counsel

From: Patrick, Amanda Zimmerman [mailto:apatrick@jw.com]

Sent: Friday, June 11, 2010 9:17 AM

To: Bob Warneke

Cc: mmcketta@gdhm.com; MAlcala@gdhm.com; Babcock, Chip; Schwarz, Kurt

Subject: RE: Judge No. 96 - Recusal

Hi Mr. Warneke,

The list of Commissioners provided below indicates that the terms of Commissioners Ann Appling Bradford, Hon. Michael R. Fields and William Lawrence expired on November 19, 2009. Please explain how they are able to sit in Judge Keller's case. Thanks in advance.

Regards, Amanda Patrick

Amanda Zimmerman Patrick Jackson Walker L.L.P. 1401 McKinney, Suite 1900 Houston TX 77010 Direct Dial: 713.752.4541 Direct Fax: 713.754.6723 Main Fax: 713.752.4221 Email: apatrick@jw.com The information contained in this email message may be privileged, confidential and protected from disclosure, and no waiver of any attorney-client work product or privilege is intended. If you are not the intended recipient, any dissemination, distribution or copying is strictly prohibited. If you think that you have received this email message in error, please email the sender and delete all copies.

From: Bob Warneke [mailto:Bob.Warneke@SCJC.state.tx.us]

Sent: Friday, June 04, 2010 11:12 AM

To: Babcock, Chip; Patrick, Amanda Zimmerman; mmcketta@gdhm.com; MAlcala@gdhm.com; Seana

Willing; Schwarz, Kurt Cc: Elaine Thompson

Subject: RE: Judge No. 96 - Recusal

Counsel,

Below is a list of current Commission members. At this time, we are expecting that all of them, save Judge Seider, will be participating in this matter.

Officers CHAIR

Mr. Jorge C. Rangel

Attorney
Corpus Christi
Appointed by State Bar of Texas
Term Expires: 11/19/2011

VICE-CHAIR

Hon. Jan P. Patterson

Justice, 3rd Court of Appeals
Austin
Appointed by Texas Supreme Court
Term Expires: 11/19/2013

SECRETARY

Ms. Janelle Shepard

Public Member
Weatherford
Appointed by Governor
Term Expires: 11/19/2011

Members

Hon. Sid Harle

Judge, 226th District Court San Antonio

Appointed by Texas Supreme Court

Term Expires: 11/19/2011

Ms. Ann Appling Bradford

Public Member, Midland Appointed by Governor Term Expires: 11/19/2009

Hon. Michael R. Fields

Judge, County Criminal Court at Law #4
Houston
Appointed by Texas Supreme Court
Term Expires: 11/19/2009

Mr. Tom Cunningham

Attorney, Houston
Appointed by State Bar of Texas
Term Expires: 11/19/2013

Mr. William "Bill" Lawrence

Public Member
Highland Village
Appointed by Governor
Term Expires: 11/19/2009

Ms. Karry K. Matson

Public Member, Georgetown Appointed by Governor Term Expires: 11/19/2013

Ms. Patti H. Johnson

Public Member, Canyon Lake Appointed by Governor Term Expires: 11/19/2011

Hon. Joel Baker

Judge, Smith County Court, Tyler Appointed by Texas Supreme Court Term Expires: 11/19/2011

Hon. Edward J. Spillane, III

Judge, College Station Municipal Court Appointed by Texas Supreme Court Term Expires: 11/19/2015

Hon. Steven L. Seider

Justice of the Peace, Precinct 3
Dallas
Appointed by Texas Supreme Court
Term Expires: 11/19/2015

From: Babcock, Chip [mailto:cbabcock@jw.com]

Sent: Friday, June 04, 2010 10:59 AM

To: Bob Warneke; Patrick, Amanda Zimmerman; mmcketta@gdhm.com; MAlcala@gdhm.com; Seana

Willing; Schwarz, Kurt Cc: Elaine Thompson

Subject: Re: Judge No. 96 - Recusal

Thank you Bob. Would you be able to provide me the names of the Commissioners who will be deciding this matter? Thanks in advance.

Sent from my BlackBerry Wireless Handheld

From: Bob Warneke

To: Babcock, Chip; Patrick, Amanda Zimmerman; McKetta, Mike; Alcala, Michelle; Seana Willing

Cc: Elaine Thompson

Sent: Fri Jun 04 10:55:19 2010 **Subject**: Judge No. 96 - Recusal

Counsel,

Commission Chairman Jorge Rangel has instructed me to inform the parties that Judge Steven L. Seider, the Justice of the Peace representative on the Commission, will recuse from the Commission's consideration of this matter. Please direct any inquiries you may have about Judge Seider's decision to me.

Thank you.

Bob Warneke, Jr. Commission Counsel

Appendix M

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BEFORE THE
                                                                                                    PROCEEDINGS
                                                                                              CHAIRMAN RANGEL: Good morning and welcome.
                 STATE COMMISSION ON JUDICIAL COMPUCT
                                                                           2
                                                                           3
                                                                                 My name is Jorge Rangel, and I am the Chair of the State
                                                                                 Commission on Judicial Conduct. I hereby convene this
                                                                                 Objections Hearing in the Inquiry Concerning a Judge,
                      INOUTRY CONCERNING A JUDGE.
                                                                                 Mumber 96. Honorable Sharon Keller, Presiding Judge, Court
6
                                NO. 96
                                                                                 of Criminal Appeals, Austin, Travis County, Texas.
                        HONORABLE SHARON KELLER
                                                                                              At this time. I will ask the members of the
              PRESIDING JUDGE, COURT OF CRIMINAL APPEALS
A
                     AUSTIN, TRAVIS COUNTY, TEXAS
                                                                           9
                                                                                 Commission to introduce themselves for the record.
٥
                                                                                              COMMISSIONER CIMPLINGHAM: Good morning. My
                                                                          10
10
                                                                                 name is Tom Cunningham. I am a lawyer from Houston,
                                                                          11
11
                          OBJECTIONS HEARING
                                                                          12
                                                                                 Texas.
12
                             JUNE 18, 2010
                                                                          13
                                                                                              COMMISSIONER JOHNSON: Good morning. I'm
13
                                                                                 Patti Johnson. I'm a public member from Canyon Lake.
                                                                          14
14
                                                                                              COMMISSIONER MATSON: Good morning. I'm
                                                                          15
15
                                                                                 Karry Matson from Georgetown. I'm a public member.
          BE IT REMEMBERED that on this the 18th day of June,
                                                                          16
16
                                                                                              COMMISSIONER SPILLANE: Good morning. My
      2010, between 9:00 a.m. and 2:02 p.m., the above-entitled
                                                                          17
17
                                                                                 name is Ed Spillane, and I'm a municipal court judge in
      matter came for hearing at the John H. Reagan Building,
                                                                          18
18
      105 West 15th Street, Austin, Texas, before the State
                                                                          19
                                                                                  College Station.
19
      Commission on Judicial Conduct; and the following
                                                                                              COMMISSIONER SHEPARD: Good morning. I'm
                                                                          20
20
                                                                                  Janelle Shepard, public member from Weatherford.
      proceedings were reported by Remea Seggern, Certified
                                                                          21
21
                                                                                              CONNESSIONER BAKER: Good morning. I'm
      Shorthand Reporter.
                                                                          22
22
                                                                                  Joel Baker. I'm a Smith County judge.
                                                                          23
23
                                                                                              COMMISSIONER LAWRENCE: Good morning. My
                                                                          24
24
                                                                          25
                                                                                 name is Bill Lawrence, public member from Highland
25
                                                                                  Village.
                         APPEARANCES
                                                                           1
      COMMISSION MEMBERS:
                                                                                              COMMISSIONER BRADFORD: Good morning. I'm
                                                                           2
            Honorable Jorge C. Rangel, Chair
            Honorable Jan P. Patterson, Vice Chair
                                                                                  Ann Bradford. I'm a public member from Midland.
                                                                           3
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23
            Honorable Janelle Shepard, Secretary
4
            Honorable Hid Harle
            Konorable Ann Appling Bradford
5
            Honorable Michael R. Fields
6
            Honorable Ton Cunningham
            Honorable William "Bill" Lawrence
7
            Honorable Karry K. Matson
            Honorable Patti H. Johnson
8
            Honorable Joel P. Baker
            Honorable Edward J. Spillane, III
       SPECIAL COUNSEL FOR THE EXAMINERS/COMMISSION:
10
            Mr. John J. McKetta, III
            Ms. Michelle Alcala
            GRAVES, DOUGHERTY, HEARON & MOODY, P.C.
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            401 Congress Avenue, Suite 2200
            Austin, Texas 78701
(512) 480-5716
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14
       EXAMINER:
15
            Ms. Seana Willing
16
            Executive Director/Examiner
            STATE CONCISSION ON JUDICIAL CONDUCT
17
            P.O. Box 12265
18
             Austin, Texas 78711
             (512) 463-7769
19
       FOR THE RESPONDENT JUDGE SHARON KELLER:
20
21
            Mr. Charles Babcock
            Mr. Kurt Schwarz
22
            JACKSON WALKER, L.L.P.
            1401 McKinney, Suite 1900
Houston, Texas 77010
```

(713) 752-4200

COMMISSIONER HARLE: Good morning, Counsel, Chief. Ny name is Sid Harle. I'm a district judge from San Antonio. COMMISSIONER PATTERSON: Good morning, Counsel, Commission. I'm Jan Patterson, Justice Third Court of Appeals here in Austin. Welcome CHAIRNAN RANGEL: Counsel, at this time 10 will you please introduce yourselves for the record. 11 MR. McKETTA: Your Honor, on behalf of the 12 Examiner, I am Mike McKetta, serving as special counsel 13 assisting Examiner Seana Willing. 14 MS. WILLING: I'm Examiner Seana Willing. 15 MR. BABCOCK: Representing Judge Keller. 16 Charles Babcock with Jackson Walker. With me is Kurt 17 Schwarz and Amanda Patrick. 18 CHAIRMAN RANGEL: Counsel, welcome. Judge 19 Keller, welcome. Examiner Willing, welcome. We are here 20 today, June 18th, 2010, to hear the party's objections to 21 the Special Master's Findings of Fact, which were entered 22 23 by the Special Master on January 19, 2010, after conducting an evidentiary hearing on the issues presented 24 in the Notice of Formal Proceedings and in the answer

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proof that's to be applied in weighing the testimony
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      that's been given in this proceeding.
                   MR. MCKHTTA: It is.
                    COMMISSIONER CURNINGHAM: Have you given
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      any thought to what the standard of review is or should
R
      be? In other words --
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                   MR. McKETTA: I have.
 В
                    COMMISSIONER CUMMINGHAM: -- what deference
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      should the Commission afford the findings of the Special
11
                    MR. McKETTA: Yes. Let us suppose.
12
      Mr. Cunningham, that there were a finding that Abel Acosts
13
      never said X. Let us suppose. Then for me to come and
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15
       say, please find something else though you have never
      heard Mr. Acosta, seen him testify, and I have no
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       conflicting evidence, or there is sufficient evidence to
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       support that, I am wasting your time and should not be
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       doing that. I hope that that's not what you will conclude
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       that I have done. I have regretted that on matters that
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21
       we specially called upon Judge Berchelmann to make
22
       findings on, there was not a finding no or yes.
                    And I have tried to focus on things for
23
       which I believe there is evidence from Judge Keller,
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least we have that kind of quidance about the standard of

never singled out a word and said, is it willful, yes or no? Is it persistent, yes or no? He just did not do that. On this occasion, was there incompetence, yes or no? He said he's not convinced that it was willful or persistent incompetence, which doesn't help us answer any of those.

I don't mean to suggest what the Commission does as its next step. The Commission has the power to remand to Judge Berchelmann to ask for further findings, to remand to Judge Berchelmann to ask for further hearings. But from those things that appear undisputed in the record, the Commission also has the complete power and right and perhaps responsibility to make the omitted findings, to allow it then to reach its conclusions and the consequences, if any.

COMMISSIONER CUMNINGHAM: Let me sharpen that, if I may, just briefly. And I appreciate the answer very much. In reviewing the record of the hearing before the Special Master, obviously there's evidence on different sides of certain factual issues, and I appreciate your argument that some of it may be undisputed, at least in your view.

But in your view, does the Commission -- is it appropriate for the Commission to disregard a finding of the Special Naster based on its own review of the

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undisputed evidence. And from that, I think there is a complete propriety, just as there would be in a reviewing court to say, if the record has clearly established that fact, then we can acknowledge that that is so as we go to our next step of conclusions and our next step of disciplinary consequences, if any.

which, in my understanding, would be properly treated as

Now, what I would urge is, I did not mean to suggest that the Commission should simply say, well, I think, yep, it probably is the case that such and such finding should be made. I think due process is an important consideration, and I know that's the belief of every Commissioner.

But we often have the similar circumstance, you in your work in a trial court going to a court of appeals, many people in their work from an administrative agency -- administrative law judge going to the agency and then going to a district court and then going to the Court of Appeals. And there are well-established guidelines for how we consider it so that an advocate doesn't simply come up and say, I sure wish you would decide something differently.

My belief is that each of the things I have urged to this Commission are well-supported and are not we quibbling with a finding that was made. The closest to that, because it is confusing, is that Judge Berchelmann

1 record. Do we have a de novo review? Do we have a clear
2 and convincing standard? Do we have -- are we bound by
3 his findings? Do you see the point of my question?

MR. MCKETTA: I believe that you do not have a de novo review on this type of Section 10 formal proceeding. I believe that your review would be guided by substantial evidence principles. I'm not sure of an example that you may have in mind of one where you think that I'm asking you to disregard.

COMMISSIONER CURNINGHAM: I don't have one.

MR. McKETTA: I don't either. My real concern is that there were -- I truly believe Judge Berchelmann was trying to attend to who caused the death of a man on September 25, which was not the charge that was given to him.

I truly believe that Judge Berchelmann thought that if there is no rule or law, rule being the defined term "promulgated rule," then it's of no consequence because for Canon 2A purposes, that would be so. But that's not so when there are duties of office other than.

So my belief is there are things that simply were not addressed. And I accept that I was the advocate who was charged with getting his attention to those matters. But there were things addressed also that

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things are undisputed in the record and that we can make

2	differently, and Judge Berchelmann did not squarely answer	2	omitted findings. What happens if there is a conflict?
3	that yes or no. But you have analyzed the right question.	3	What is the deference we give to the findings of the
4 .	It is not, did I willfully succeed in denying access; it	4	Special Master? Is there a deference? Do we have and
5	is, did I willfully fail to accord access. So pardon	5	we do have this excellent record that you-all have
6	шу	6	provided us. What do we do if there is a conflict in
7	COMMISSIONER HARLE: I'm saying it is not	7	either credibility or testimony?
8	just the willful violation of the protocol.	8	MR. McKETTA: If I were in your shoes and
8	MR. MCKETTA: Correct.	9	saw a conflict that supported the finding, though there
10	COMMISSIONER HARLE: We have to go further	10	was contrary evidence, I would give deference to the
11	than that and we have to have the willful aspect go to the	11	finding. If there was evidence that had a scintilla but
12	right to be heard and accord the right of access.	12	the great preponderance of evidence, the overwhelming
13	MR. McKETTA: For a 3B(8) violation.	13	evidence, were to the contrary, I would be persuaded that
14 .	COMMISSIONER HARLE: That's what I was	. 14	that was an erroneous finding. I don't know if that's th
15	focused on.	.15	role that you would have as a Commissioner.
16	MR. McKETTA: You are exactly right, Your	16	But my effort has been to bring objections
17	Honor.	17	dealing with findings that are not trying to disregard
18	COMMISSIONER HARLE: And that's an omitted	18	Findings of Fact but are trying to achieve findings that
19	finding.	19	by I perceive Judge Keller's testimony support this
20	MR. McKETTA: It is an omitted finding.	20	Court's conclusion of willful failure to comply with duty
21	COMMISSIONER HARLE: So that would be	21	of office and whatever consequences, if any, the
22	something we would be looking at in your argument that was	22	Commission concludes.
23	omitted?	23	COMMISSIONER PATTERSON: And you commented
24	MR. MCKETTA: It was an emitted finding.	24	at the beginning about the dearth of finding on
25	And so is the evidence one from which you can make the	25	willfulness, persistence. Am I correct that the only

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finding? Is it one that needs a remand? Is it irrelevant
in your analysis to the other things? And that's why when
someone earlier asked, I said that the centerpiece that I
think this evidence promotes is not the willful violation
of the Canon but the willful failure to comply with the
duty of office, which was the mandatory execution day
protocol.

COMMISSIONER HARLE: And we don't
necessarily, since we have a well-developed record thanks
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that that was willful and the Commission may resolve that

necessarily, since we have a well-developed record thanks to competent counsel, we don't necessarily have to remand to have that issue determined by Judge Berchelmann since we have the record before us.

MR. MCKRTTA: That's my belief, that the record answers the questions that are raised by our objections. The Commission may have a different view on that, but that's my belief, that you do not need a remand.

COMMISSIONER HARLE: Thank you very much.

I appreciate your, again, excellent work along with Mr. Babcock. And we appreciate your presentation. That is all I have, Mr. Chairman.

21 CHAIRMAN RANGEL: Justice Patterson.

COMMISSIONER PATTERSON: Good morning. My questions also concern the intent and also the treatment of Findings of Fact that Commissioner Cunningham asked about. First, is it clear -- I think you said that some

finding in the report concerning willfulness was his statement that, quote, although Judge Keller might have exhibited poor judgment in making this decision, it was within her sole discretion. Further, although she certainly exhibited poor judgment in not reminding Marty of the court's execution day procedure and in failing to notify Judge Johnson of the communication, this inaction does not rise to the level of willful or purposeful incompetence. Is that the only reference?

MR. MCKETTA: In the entire opinion. And, therefore, that was why I was not meaning to be critical but pointed out earlier there was never a separation of incompetence and willful. And I had misremembered the word "persistent." It was purposeful, willful or purposeful, is what he wrote.

COMMISSIONER PATTERSON: And that's the only reference to --

MR. MCKETTA: That I recall.

COMMISSIONER PATTERSON: I just wanted to make sure I didn't miss anything. As to persistence, am I correct that there is either a time element or a repetitive aspect to that word, it would seem to me. And in characterising conduct as persistent, for you to come to that conclusion, does it require you to rely upon what you call her adaments or her continual insistence that she

of Findings of Fact that Commissioner Cunningham asked 24 to that conclusion, does it require you to rely upon what about. First, is it clear -- I think you said that some 25 you call her adamants or her continual insistence that she

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amended complaint. But it didn't happen here. But the
business about supervision is not appropriate for another
reason. There's no evidence to support it.
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The whole court hires the general counsel? Judge Johnson, the Examiner's first witness, said, yes, sir, and he is responsible to the personnel committee headed by Judge Price. He is responsible to all nine of us. But there are three members of the committee that handles most of the personnel issues. He is certainly not responsible to the presiding judge, correct? Not directly, just as to any other judge, Judge Johnson went

Mr. Acosta, who was in argument, referred to by Mr. McKetta as part of Judge Keller's staff, is actually in the clerk's office, and he accounts to Louise Pearson, the clerk of the court, not reporting to Judge

You-all asked, and appropriately so, what the standard of review is. I agree with Mr. McKetta that de novo is not appropriate. There has to be some deference given to Judge Berchelmann.

We sharply disagree on the burden of proof. Your rule says preponderance of the evidence. We think that is, on its face, unconstitutional. We have filed a brief with Judge Berchelmann and with you and believe that

Constitution helps us with is that it says that you can only make a finding with good cause, but doesn't define what good cause is.

But at the bottom of all this, Judge Keller answered the phone and spoke for approximately 60 seconds. And from that, certain people have concocted arguments and charges against her, which Judge Berchelmann, after four days of testimony and hearing all the witnesses and judging their demeanor, some of which was good and some of which wasn't, found that she had not violated any written or unwritten rule.

I know I have a minute left, and as a personal matter, I would like to share with you the almost unspeakable toll that this has taken on Judge Keller personally, reputationally and financially. And she has borne this ordeal with grace and dignity and good humor.

In San Antonio last August, we exposed the case against her before Judge Berchelmann for the pack of lies that it is. It has been manufactured by people with a political agenda. If you approve of these tactics, no judge is going to be safe and you will have done more to destroy the public confidence and the integrity and the impartiality of the judiciary than Judge Keller could possibly have done in her 60-minute conversation with Ed Marty.

the standard is clear and convincing evidence, and the brief outlines why we think so. Judge Berchelmann did not say what evidentiary standard he was applying. All he said was that, I'm finding the facts I'm finding and that she didn't violate any written or unwritten rule.

You also have another rule that we think is unconstitutional, Rule 10(m). You will see that it says that you can by affirmative vote of six of its members recommend to the review tribunal. If you read the Constitution it says, the affirmative vote must be by at least seven members. So your rule absolutely is contradicted by our Texas Constitution and is unconstitutional on its face.

I do note with some pleasure, Mr. Chairman, that you-all intend to record your vote on this occasion. In the Hecht case, there was no recorded vote taken and there was no records, and the chair at that time was unable to recall even what the vote was, which we didn't think was appropriate.

The issue of what standard you must apply if you recommend censure or removal, I think, is not as clear. I think one thing is clear. You have to make sure that there is evidence that clearly and convincingly shows that there's been a violation.

As for deference, the only thing that the

I know that wasn't exactly from the record.

That one comes from the heart.

Thank you, Mr. Chairman. Thank you, members of the Commission.

CHAIRMAN RANGEL: Thank you, Mr. Babcock.

As in the previous round, we will have some questions for you now.

I noted in your opening remarks that you put up on the screen that quote from the Special Master's report that he did not believe that any -- certainly that the record did not warrant removal from office. And beyond that he went on to say that no further reprimend was warranted. I believe.

MR. HABCOCK: Her conduct, however, does not warrant removal from office or even further reprimand.

CHAIRMAN RANGEL: I want to visit with you a little about the respective roles of the Special Master and the Commission. As you know, the Special Master, his role is to, after an evidentiary hearing, submit a report with Findings of Fact.

My question to you would be whether you consider that statement by the Special Master that no further sanction is warranted to be a finding of fact, a statement of his opinion, a fact opinion arena or just his belief, and what weight, if any, are we to give to that

Appendix N

1	INQUIRY CONCERNING JUDGE,
2	NO. 96
3	VOLUME 4 OF 7
4	
5	IN RE: *
6	*
7	THE HONORABLE SHARON KELLER, *
8	PRESIDING JUDGE OF THE TEXAS * HEARING HELD BEFORE
9	COURT OF CRIMINAL APPEALS, * THE APPOINTED SPECIAL
10	AUSTIN, TRAVIS COUNTY, TEXAS * MASTER
11	
12	
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16	
17	On the 19th day of August, 2009, the following proceedings
18	came on to be heard in the above-entitled and numbered cause
19	before the Honorable David A. Berchelmann, Jr., Judge presiding,
20	held in San Antonio, Bexar County, Texas:
21	
22	Proceedings reported by computerized stenotype machine.
23	
24	
25	COPY

1	APPEARANCES:
2	
3	MR. JOHN J. McKETTA, III SBOT NO. 13711500
4	MS. MICHELLE ALCALA SBOT NO. 24040403
5	GRAVES DOUGHERTY HEARON & MOODY, P.C.
6	401 CONGRESS AVENUE, SUITE 2200 AUSTIN, TEXAS 78701 Phone: (512) 480-5816
7	SPECIAL COUNSEL FOR THE STATE
8	COMMISSION ON JUDICIAL CONDUCT
9	MS. SEANA BECKERMAN WILLING ATTORNEY AT LAW
10	SBOT NO. 00787056 STATE COMMISSION ON JUDICIAL CONDUCT
11	P.O. BOX 12265 AUSTIN, TEXAS, 78711
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13	COUNSEL FOR THE STATE COMMISSION ON JUDICIAL CONDUCT
14	
15	MR. CHARLES L. BABCOCK SBOT NO. 01479500
16	MR. KURT A. SCHWARZ SBOT NO. 17871550
17	JACKSON WALKER L.L.P. 901 MAIN STREET, SUITE 6000
18	DALLAS, TEXAS 75202 Phone: (214) 953-6000
19	COUNSEL FOR RESPONDENT
20	THE HONORABLE JUDGE SHARON KELLER
21	
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- 1	

1	VOLUME 4								
2	HEARING BEFORE SPECIAL MASTER								
3	August 19, 2009						Page	Vol.	
4	Examiner Rests						158	4	
5	Court Reporte	Court Reporter's Certificate.					159	4	
6	EXAMINER'S WI	TNESSES	Direct		Cross	Voir Di	re	Vol.	
7	Hon. Sharon M	Keller	31		3,59			. 4	
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13	EXHIBIT INDEX								
14	Examiner's					e e			
15		Descript		Offe	ered	Admitted		Vol.	
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19	Ex. No.	Description		Offered		Admitted		Vol.	
20	47	TRAP 9.2							
21	48	Keller 000006 Gov't Code Sec.		29		31		4	
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25	City Connected DWQ of Intern		nected	29		31		4	
	America, Inc.			29		31		4	
L				:					

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- Q. Okay. Sure. And it was your interpretation of the unwritten policy that I -- that was later reduced into writing that I just read, that this only related to substantive communications regarding the scheduled execution and not administrative matters; correct?
 - A. That's correct.
- Q. All right. And that's why you called Judge Keller rather than communicating with Judge Johnson; correct?
 - A. That's correct.
- Q. Because it was Judge Keller who the legislature had delegated the responsibility to keeping the clerk's office open after 5:00 o'clock; correct?
- 14 A. That's correct.
 - Q. So that's why you called her?
- 16 A. Yes.
 - Q. All right. And it goes on to say, The term communication includes pleadings, telephone calls, faxes, e-mails, and other means of communication with the court. The assigned judge may call a special conference or gather votes by telephone, e-mail, fax or any other form of communication.
 - Again, was this something that you inherited or did you create this policy?
- A. That was -- I refined the policy that existed to this
 one, because before the assigned judge may have done that, but my

predecessor also would do it. In other words, he would make all the phone calls and get all the votes. I felt uncomfortable doing that and felt that that was what the judges were supposed to be doing on their case, and so I will say I refined it --

Q. Okay.

- A. -- so that the assigned judge -- other than that, that was done.
 - Q. All right, sir. Your predecessor was a gentleman by the name of Rick Wetzel; correct?
 - A. That's correct.
 - Q. All right, sir. And so that's why we see it as today. But, in any event, this paragraph was something that you had developed as general counsel to the Court of Criminal Appeals refining the prior practice that Mr. Wetzel had employed; correct?
 - A. That's correct.
 - Q. All right. And the last paragraph in the execution day procedures listed here on this page is if the communication includes a request for stay of execution, the assigned judge shall contact by any reasonable means the other members of the court and request a vote on the motion to stay. Reasonable means includes calling a special conference and contact by electronic communication. Not assigned judges will provide to the assigned judge an adequate means of contact, such as home and cellular telephone numbers or other means of contact.

Did I read it correctly?

- You read that correctly. Α.
- And did you inherit this policy or procedure from Mr. 0. Wetzel or did you refine it or create it?
- I begged that this being done, and it had not been implemented by the time I left that I was aware of. There were times that the judges were overseas when executions happened, they were just incommunicado.
- 0. All right. So this was a policy that -- that you suggested and wanted to see happen, but it didn't -- that didn't happen all the time on the court while you were there?
- Α. That's correct.
- Okay. And by not happening it means that some judges Ο. didn't comply with this procedure; correct?
- Α. Yes.

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- ο. All right. Now, on September 25th Judge Keller was 17 certainly available to vote on a motion for stay and she was in 18 contact with you, you knew how to get her; correct?
- 19 Α. Yes.
 - All right. So at least on September 25th, 2007, Judge Q. Keller complied with this last paragraph of the execution day procedures; correct?
 - Α. Yes.
- 24 0. Okay. But Exhibit 6, even though it wasn't created and 25 put down in writing until later, that is, by and large, the

Appendix O

1	BEFORE THE	
2	STATE COMMISSION ON JUDICIAL CONDUCT	
3		
4		
5	INQUIRY CONCERNING	
6	JUDGE #96	
7		
8		
9		
10	HEARING ON MOTIONS	
11		
12		
13		
14		
15		
16	On the 10th day of July, 2009, the following p	roceedings
17	came on to be heard in the above-entitled and number	ed cause
18	before the Honorable David A. Berchelmann, Jr., Judg	e presiding,
19	held in San Antonio, Bexar County, Texas:	٠.
20		
21	Proceedings reported by computerized stenotype	machine.
22		
23		
24		
25		

1	APPEARANCES:
2	
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	SPECIAL COUNSEL FOR THE STATE
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11	Phone: (214) 953-6000
12	COUNSEL FOR RESPONDENT
	THE HONORABLE JUDGE SHARON KELLER
13	
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- 1 A. It just says that the notice shall be filed, it doesn't
- 2 say the commission, I don't believe. I don't have the rules or
- 3 the statute in front of me.
- 4 Q. That's all right. But those -- that provision of the
- 5 government code doesn't say anything about -- let me rephrase
- 6 that. That provision of the government code provides that --
- 7 MR. SCHWARZ: And Your Honor obviously can read it
- 8 for yourself.
- 9 THE COURT: That's all right. Ask the question.
- 10 Q. (BY MR. SCHWARZ) That provision of the government code
- 11 provides that the commission initiates investigations and if
- 12 the -- if the commission decides that formal proceedings
- 13 should -- should be undertaken, there is a -- there is a process
- 14 that is outlined there for the conduct of the formal proceedings;
- 15 correct?
- 16 A. That's true, yes.
- 17 Q. Okay. Did the commission -- did you review the -- let
- 18 me back up.
- 19 Who drafted the amended notice?
- 20 A. A special counsel.
- Q. Okay. Did he do so with your participation?
- 22 A. Yes.
- Q. Was anyone else involved? And, I mean, not simply -- I
- 24 mean, was there anyone else other than you and Mr. McKetta and
- 25 members of his law firm involved in drafting the -- the amended

In Re Keller Page 18

- 1 notice?
- A. Not that I'm aware of.
- Q. Okay. Did you take the amended notice to the commission
- 4 for its approval?
- 5 A. No, sir.
- 6 Q. Okay. So prior to filing you did not ask the commission
- 7 whether you could go forward and file the amended notice;
- 8 correct?
- 9 A. That's correct.
- 10 Q. Okay. Have you done so since then?
- 11 A. No, sir.
- 12 Q. Okay. So as we stand here today, has anyone in the
- 13 commission even read it? Read the amended notice, to your
- 14 knowledge?
- 15 A. Not to my knowledge.
- MR. SCHWARZ: Okay. I'll pass the witness.
- MR. McKETTA: No further questions, Your Honor.
- 18 And I would ask Mr. Schwarz if he has further closing argument
- 19 before I do my closing.
- THE COURT: Well, first of all, let's get her off
- 21 the stand.
- MR. McKETTA: Sorry, Your Honor.
- THE WITNESS: Thank you.
- MR. McKETTA: Pardon me.
- THE COURT: That's okay.

Appendix P

BEFORE THE

STATE COMMISSION ON JUDICIAL CONDUCT

INQUIRY CONCERNING A JUDGE,

No. 96

RESPONSE TO RESPONDENT'S FIRST REQUEST FOR ADMISSIONS

TO: The Honorable Judge Sharon Keller, by and through her counsel of record Charles ("Chip") L. Babcock, JACKSON WALKER, LLP, 1401 McKinney Street, Suite 1900, Houston, Texas 77010.

COMES NOW, the State Commission on Judicial Conduct ("State Commission") and submits these its Objections and Responses to Respondent's First Request for Admissions.

Respectfully submitted,

GRAVES DOUGHERTY HEARON & MOODY, P.C.

401 Congress Avenue, Suite 2200

Austin, Texas 78701

(512) \$80-5716 Telephone

(\$12) \$36-9916 Telecopier

By:

John J. McKetta, III

State Bar Number 13711500

Michelle Alcala

State Bar Number 24040403

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on the following counsel via U.S. Certified Mail, Return Receipt Requested, on this 23 day of April, 2009:

Mr. Charles ("Chip") L. Babcock JACKSON WALKER, LLP 1401 McKinney Street, Suite 1900 Houston, Texas 77010

Michelle Alcala

RESPONSE:

Deny.

ADMISSION NO. 10:

Admit that Mr. Marty was on the premises on the CCA on September 25, 2007 from 4 p.m. until after the execution of Richard.

RESPONSE:

Admit

ADMISSION NO. 11:

Admit that Mr. Marty was aware of the procedure to refer any inquiries regarding any filings related to the execution of Richard to the "designated judge" on September 25, 2007.

RESPONSE:

The State Commission is not aware whether Mr. Marty was aware of the procedure to refer any inquiries regarding any filings related to the execution of Richard to the "designated judge" on September 25, 2007, and therefore, does not have enough information to admit or deny this request.

ADMISSION NO. 12:

Admit that any stay of execution could have been filed with the "designated judge" on September 25, 2007 after 5 p.m.

RESPONSE:

The State Commission admits that a stay of execution could have been filed with any CCA judge on September 25, 2007 after 5 p.m., but denies that the designated judge for the execution on September 25, 2007 was public information.

ADMISSION NO. 13:

Admit that the use of the "designated judge" by the CCA makes it unnecessary for the CCA Clerk's office to remain open past 5 p.m. on execution days.

RESPONSE:

Deny.

Appendix Q

1	INQUIRY CONCERNING JUDGE,					
2	NO. 96					
3	VOLUME 2 OF 7					
4						
5	IN RE: *					
6	*					
7	THE HONORABLE SHARON KELLER, *					
8	PRESIDING JUDGE OF THE TEXAS * HEARING HELD BEFORE					
9	COURT OF CRIMINAL APPEALS, * THE APPOINTED SPECIAL					
10	AUSTIN, TRAVIS COUNTY, TEXAS * MASTER					
11						
12						
13						
14						
15						
16						
17	On the 17th day of August, 2009, the following proceedings					
18	came on to be heard in the above-entitled and numbered cause					
19	before the Honorable David A. Berchelmann, Jr., Judge presiding,					
20	held in San Antonio, Bexar County, Texas:					
21						
22	Proceedings reported by computerized stenotype machine.					
23						
24						
25	COPY					
l						

1	APPEARANCES:
2	
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21	THE HONORABLE JUDGE SHARON KELLER
22	
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1	VOLUME 2						
2	н	HEARING BEFORE SPECIAL MASTER					
3	August 17, 2009 Page					Vol.	
4	Rule Invoked					3	2
5	Opening Statement by	the Exar	miner	• • • • • • •		4	2
6	Opening Statement by	Opening Statement by the Respondent 21				2	
7	Court Reporter's Cer	tificate				186	2
8	EXAMINER'S WITNESSES	Direct		Cross	Voir Dir	e	Vol.
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10	Dorinda Fox	129		139			2
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13		ALPHA	BETIC	CAL INDEX	:		
14		Direct		Cross	Voir Dire	9	Vol.
15	Abel Acosta	157,182 184	2	175,183			2
16 17	Dorinda Fox Hon. Cheryl Johnson	129		139 87,124	84		2 2 2 2
18		EXF	HIBIT	INDEX			
19 20	Examiner's Ex. No. Descri	ption	Offe	ered	Admitted		Vol.
21	1 CCA Pro 000041	ocedures -42	55		56		2
22	2 E-mail Hervey		55		55		2
23	3 E-mail Hervey	,	55		55		2
24	4 E-mail	string,	55		55		2
25		string,	55		55		2
							2

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your phone, did she?
 1
              No, but she denied the request.
         A.
         Ο.
              She what?
 3
              She apparently denied the request.
         Α.
 4
 5
         0.
              You don't know that, do you?
 6
         Α.
              No, sir.
              You just told this Court you don't know what was said on
 7
    that telephone call, do you?
 8
 9
         Α.
              No.
             All right. And you were in your chambers and your staff
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         ο.
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    was so how could she have blocked access to you since you were
12
    ready, willing, and able to get it?
              She apparently could not.
13
        Α.
14
        Q.
             She what?
15
             She apparently couldn't.
        Α.
             And that's the point, isn't it, Judge Keller couldn't
16
        Q.
17
    have if she wanted to block access to you because you were
18
    sitting there willing to accept the pleading; isn't that correct?
19
        Α.
             That is correct.
                   MR. BABCOCK: Okay, thank you.
20
21
                   MR. McKETTA: No further questions. We call Rindy
22
    Fox, Your Honor.
                               Okay. Is that exhibit in my book
23
                   THE COURT:
                I couldn't find it.
24
    somewhere?
```

MR. BABCOCK: No, Your Honor, I'll get you a copy.

25

THE COURT: Well, that's okay, later. We don't			
have to do it right now. That's fine, let's just continue on.			
Okay. Rindy Fox.			
MR. McKETTA: Oh, Your Honor, may Judge Johnson be			
excused from the rule?			
MR. BABCOCK: No objection, Your Honor.			
THE COURT: Okay, be granted.			
You were sworn in earlier; is that correct?			
MS. FOX: Yes, sir.			
THE COURT: Okay, go ahead, Counsel.			
MR. McKETTA: Your Honor, I ask for some guidance.			
Our rules are to remain seated for questioning witnesses.			
THE COURT: That's okay.			
MR. McKETTA: But you gave us permission for the			
judges we could stand.			
THE COURT: Absolutely.			
MR. McKETTA: I'll follow the rules for all other			
witnesses.			
THE COURT: No, that's all right. If you want to			
get up and walk around, you're more than welcome to do that if it			
makes you feel more comfortable.			
DORINDA FOX,			
having been first duly sworn, testified as follows:			
DIRECT EXAMINATION			
BY MR. McKETTA:			

Appendix R

MISC. DOCKET NO. 04-9042

ORDER OF THE SUPREME COURT OF TEXAS

Appointment to the State Commission on Judicial Conduct

Pursuant to Texas Constitution, Article 5, § 1-a (2) & (3), the Supreme Court of Texas hereby appoints to the State Commission on Judicial Conduct:

The Honorable Michael R. Fields Judge, County Criminal Court No. 14 Houston, Harris County, Texas

This appointment is for a term of six years, to expire November 19, 2009.

In Chambers, this 194 day of March, 2004.

Thomas R. Phillips, Chief Justice

Nathan L. Hecht, Justice

Priscilla R. Owen, Justice

Harriet O'Neill, Justice

Wallace B. Jefferson, Justice

Michael H. Schneider, Justice

Steven Walne Sporth, Justice

January Manner Sporth, Justice

Misc. Docket No. 04_9042

SEVENTY-FOURTH DAY

FRIDAY, MAY 20, 2005

PROCEEDINGS

The Senate met at 11:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Averitt, Barrientos, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Shapleigh, Staples, Van de Putte, Wentworth, West, Whitmire, Williams, Zaffirini.

The President announced that a quorum of the Senate was present.

The Reverend Robert Carter, Colonial Hills Baptist Church, Tyler, offered the invocation as follows:

Our Father, we bow in Your presence this morning to thank You for the beginning of this brand new day and for the opportunity it gives us to serve You and our fellow man. Lord, it's obvious that You have been good to the great State of Texas. You have blessed us beyond measure. We have more to celebrate and more for which to be grateful than almost any other people on the face of the Earth, and we thank You. But, Lord, with blessedness we understand there comes great responsibility. And that's why these men and women are gathered here this morning, to be responsible, to be responsible for that which has been entrusted into their care by You and the people of Texas. Father, we pray for Your wisdom, for Your divine guidance, that every decision made would be in accordance to Your will and that it would all be done for that which is truly good for Texas and to Your glory forever. We pray in Your wonderful name. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of yesterday be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

CO-SPONSOR OF HOUSE BILL 1006

On motion of Senator Janek, Senator Williams will be shown as Co-sponsor of HB 1006.

2598

SESSION TO CONSIDER EXECUTIVE APPOINTMENTS

The President announced the time had arrived to consider executive appointments to agencies, boards, and commissions. Notice of submission of these names for consideration was given Wednesday, May 18, 2005, by Senator Lindsay.

Senator Lindsay moved confirmation of the nominees reported Wednesday by the Committee on Nominations.

The President asked if there were requests to sever nominees.

There were no requests offered.

NOMINEES CONFIRMED

The following nominees, as reported by the Committee on Nominations, were confirmed by the following vote: Yeas 31, Nays 0.

Members, Texas Department of Housing and Community Affairs Board: C. Kent Conine, Collin County; Patrick R. Gordon, El Paso County.

Members, Correctional Managed Health Care Committee: Jean M. Frazier, Bexar County; Desmar Walkes, M.D., Bastrop County.

Members, Texas Guaranteed Student Loan Corporation Board of Directors: Phil Diebel, Denton County; Sade Johnson, Harris County; Jane B. Phipps, Bexar County; Dora Ann Verde, Bexar County.

Members, Texas Historical Commission: Earl Broussard, Jr., Travis County; Diane Bumpas, Dallas County; Donna D. Carter, Travis County; Sara Armstrong "Sarita" Hixon, Harris County; Thomas R. Phillips, Bastrop County; Marcus Warren Watson, Dallas County.

Members, State Commission on Judicial Conduct: Michael R. Fields, Harris County; Monica A. Gonzalez, Bexar County; William A. "Buck" Prewitt III, Llano County.

Member, Texas Juvenile Probation Commission: Jean Boyd, Tarrant County.

Members, Motor Vehicle Board of the Texas Department of Transportation: Mike Arismendez, Jr., Lubbock County; Jana Howden, Travis County; Cynthia Tyson Jenkins, Dallas County; Victor Thomas Vandergriff, Tarrant County.

Member, State Preservation Board: Jocelyn Levi Straus, Bexar County.

Members, Private Sector Prison Industries Oversight Authority: William B. Brod, Harris County; Suzanne Carlton Hart, Fayette County; Raymond G. Henderson, Travis County.

Presiding Officer, Product Development and Small Business Incubator Board: Mae C. Jemison, M.D., Harris County.

SENATE JOURNAL

EIGHTY-FIRST LEGISLATURE — REGULAR SESSION

AUSTIN, TEXAS

PROCEEDINGS

NINTH DAY

(Monday, February 9, 2009)

The Senate met at 1:30 p.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

The President announced that a quorum of the Senate was present.

The Reverend Adam T. Carrington, Sr., Grant African Methodist Episcopal Worship Center, Austin, offered the invocation as follows:

Almighty and everlasting God, the God of all humankind and of all creation, we are here today asking for wisdom during these difficult times in our country. We ask God that You bless our Governor, Lieutenant Governor, and every Member of this 81st Texas legislative session with wisdom, helping them to make the necessary decisions that will stimulate our economy with financial successes, keeping hope alive for all American families so that we can say together with confidence we have weathered this economic storm. Dear God, continue to bless our military branches all over the world and every member of their families, protecting them from all hurt, harm, and danger as they keep America safe. Almighty God, bless America and especially the State of Texas, making us the nation where every man, every woman, every boy, and every girl can enjoy freedom, safety, financial success, and the liberty to pursue happiness. In Your name. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of Wednesday, February 4, 2009, be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

CO-AUTHORS OF SENATE BILL 105

On motion of Senator Hinojosa, Senators Ogden, Seliger, and Watson will be shown as Co-authors of SB 105.

Mr. Hatchel was appointed on May 14, 2008, to a term of three years which will expire on June 30, 2011. He succeeds Mr. Rodolfo Garcia, whose term had expired.

Ms. Gagliardi was appointed on November 19, 2007, to a term which will expire on June 30, 2010. She succeeds Mr. Bill Burch, whose term had expired.

Mr. Flowers was appointed on September 26, 2007, to a term which will expire on June 30, 2009. He succeeds Mr. Fred Aurbach, whose term had expired.

Mr. Kyker was appointed on September 26, 2007, to a term which will expire on June 30, 2009. He succeeds Mr. Mickey R. Redwine, whose term had expired.

The Supreme Court of Texas requests the consent and confirmation of the Senate for each of these appointments.

Sincerely, /s/Wallace B. Jefferson Chief Justice

MESSAGE FROM THE STATE BAR OF TEXAS

The following Message from the State Bar of Texas was read and was referred to the Committee on Nominations:

STATE BAR OF TEXAS

Austin, Texas February 3, 2009

TO THE SENATE OF THE EIGHTY-FIRST LEGISLATURE, REGULAR SESSION:

I ask the advice, consent and confirmation of the Senate with respect to the following appointment:

To be a member of the Commission on Judicial Conduct for a term to expire November 19, 2013:

Tom Alan Cunningham Cunningham, Darlow & Zook, LLP 900 Fannin, Suite 3700 Houston, TX 77010

(Mr. Cunningham was appointed on September 28, 2007, by then State Bar President Gib Walton for a term beginning November 20, 2007, and replacing Ronald D. Krist)

Respectfully submitted,

/s/Harper Estes President

SENATE RESOLUTION 151

Senator Uresti offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to join the citizens and community leaders of Pecos County in celebrating Pecos County Day at the State Capitol on February 9, 2009; and

SENATE JOURNAL

EIGHTY-FIRST LEGISLATURE — REGULAR SESSION

AUSTIN, TEXAS

PROCEEDINGS

THIRTY-FIFTH DAY

(Wednesday, April 8, 2009)

The Senate met at 11:08 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

The President announced that a quorum of the Senate was present.

Chaplain Brett Shayler, Weatherford College Fire Academy, Weatherford, offered the invocation as follows:

Heavenly Father, we ask for wisdom and strength in all of our tasks that we seek this day. Being experienced in the ways of the world, we all strive to gain more knowledge and to understand the spirit in our lives and allow the spirit that moves between us and calls us by a secret whispering in our hearts to give all that we can of love and devotion to our fellow man. Search us and know our hearts and know our anxieties and see if there is any wicked way in us that needs to be forgiven and lead us in the way of everlasting love. Protect and show Your everlasting love for the soldiers, firefighters, law enforcement officers, emergency medical personnel, and their families and loved ones as they protect us. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of yesterday be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

CO-AUTHOR OF SENATE BILL 16

On motion of Senator Averitt, Senator West will be shown as Co-author of SB 16.

CO-AUTHOR OF SENATE BILL 66

On motion of Senator Nelson, Senator Lucio will be shown as Co-author of SB 66.

CSSB 855 as amended was passed to engrossment by the following vote: Yeas 22, Nays 9.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Harris, Hinojosa, Lucio, Nichols, Seliger, Shapiro, Shapleigh, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Fraser, Hegar, Huffman, Jackson, Nelson, Ogden, Patrick, Uresti, Van de Putte.

(President in Chair)

SENATE BILL ON FIRST READING

The following bill was introduced, read first time, and referred to the committee indicated:

SB 2515 by Williams

Relating to the administration, powers and duties, operations, and financing of The Woodlands Township.

To Committee on Intergovernmental Relations.

SENATE BILL 1098 REREFERRED

Senator Carona submitted a Motion In Writing requesting that SB 1098 be withdrawn from the Committee on Transportation and Homeland Security and rereferred to the Committee on Health and Human Services.

The Motion In Writing prevailed without objection.

SESSION TO CONSIDER EXECUTIVE APPOINTMENTS

The President announced the time had arrived to consider executive appointments to agencies, boards, and commissions. Notice of submission of these names for consideration was given Monday, April 6, 2009, by Senator Jackson.

Senator Jackson moved confirmation of the nominees reported Monday by the Committee on Nominations.

The President asked if there were requests to sever nominees.

There were no requests offered.

NOMINEES CONFIRMED

The following nominees, as reported by the Committee on Nominations, were confirmed by the following vote: Yeas 31, Nays 0.

Members, Commission on Jail Standards: Irene A. Armendariz, El Paso County; Donna Sue Klaeger, Burnet County; Jerry W. Lowry, Montgomery County; Larry S. May, Nolan County; Gary Painter, Midland County; Tam Terry, Carson County.

Member, Correctional Managed Health Care Committee: James Dale Griffin, M.D., Dallas County.

Members, Crime Stoppers Advisory Council: Nelda L. Garcia, Jim Wells County; Jorge E. Gaytan, Harris County; Emerson Frederick Lane, Jr., Jefferson County.

Members, Board of Trustees, Employees Retirement System of Texas: Cydney C. Donnell, Gillespie County, Donald E. Wood, Ector County.

Members, Judicial Compensation Commission: Ramiro A. Galindo, Brazos County; Tommy Steve "Tom" Harwell, El Paso County; Harold Jenkins, Dallas County; Patrick W. Mizell, Harris County; Paul Bane Phillippi, Bastrop County; Wanda Chandler Rohm, Bexar County; Linda B. Russell, Galveston County; Michael L. Slack, Travis County; William M. Strawn, Travis County.

Members, Produce Recovery Fund Board: Ralph Diaz, Nueces County; Ly H. Nguyen, Fort Bend County; Bernie Thiel, Jr., Lubbock County; Byron Edward White, Tarrant County.

Members, Product Development and Small Business Incubator Board: Michael Arlen Davis, Jr., Travis County; Neil A. Iscoe, Travis County; David Russell Margrave, Bexar County.

Members, State Board for Educator Certification: Michael Acuff, Tarrant County; Sandra Bridges, Rockwall County; Stefani Danielle "Stef" Carter, Dallas County.

Members, State Commission on Judicial Conduct: Tom Alan Cunningham, Harris County; William C. Lawrence, Denton County; Karry Kay Matson, Williamson County; Janet P. Patterson, Travis County; Wanda Janelle Shepard, Parker County.

Members, Texas Board of Criminal Justice: Oliver John Bell, Llano County; John "Eric" Gambrell, Dallas County; Janice Harris Lord, Tarrant County; R. Terrell McCombs, Bexar County; J. David Nelson, Lubbock County; Carmen Villanueva-Hiles, Hidalgo County.

Members, Texas Board of Professional Land Surveying: Jon Edwin Hodde, Washington County; David Gregory Smyth, Uvalde County.

Members, Texas Judicial Council: Keely Appleton, Tarrant County; Richard Vernon Battle, Travis County; Fred E. Davis, Travis County, Richard "Rick" Figueroa, Fort Bend County; Allyson N. Ho, Dallas County; Henry Nuss, Nueces County.

NOTICE GIVEN FOR LOCAL AND UNCONTESTED CALENDAR

Senator Williams announced that a Local and Uncontested Calendar had been furnished to each Member of the Senate. He then gave notice that the Local and Uncontested Calendar Session would be held at 8:00 a.m. tomorrow and that all bills and resolutions would be considered on second and third reading in the order in which they were listed.

SENATE RULE 11.13 SUSPENDED (Consideration of Bills in Committees)

On motion of Senator Williams and by unanimous consent, Senate Rule 11.13 was suspended to grant all committees permission to meet while the Senate is meeting tomorrow.

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 07- 9196

APPOINTMENT TO THE STATE COMMISSION ON JUDICIAL CONDUCT

Pursuant to the Texas Constitution, Article 5 § 1-a (2), (3), the Supreme Court of Texas appoints the following member to the State Commission on Judicial Conduct:

Honorable Jan Patterson Third Court of Appeals (Austin) Travis County

Justice Patterson is appointed to a term that will expire in November 19, 2013.

In Chambers, this 24th day of November, 2007.

Wallace B. Jefferson, Chief Instice

Nathan L. Hecht, Justice

Harriet O'Neill, Justice

J. Pale Manusciafet

J. Dale Wainwright, Justice

Scott Brister, Justice

David M. Medina, Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

SENATE JOURNAL

EIGHTY-FIRST LEGISLATURE — REGULAR SESSION

AUSTIN, TEXAS

PROCEEDINGS

THIRTY-FIFTH DAY

(Wednesday, April 8, 2009)

The Senate met at 11:08 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

The President announced that a quorum of the Senate was present.

Chaplain Brett Shayler, Weatherford College Fire Academy, Weatherford, offered the invocation as follows:

Heavenly Father, we ask for wisdom and strength in all of our tasks that we seek this day. Being experienced in the ways of the world, we all strive to gain more knowledge and to understand the spirit in our lives and allow the spirit that moves between us and calls us by a secret whispering in our hearts to give all that we can of love and devotion to our fellow man. Search us and know our hearts and know our anxieties and see if there is any wicked way in us that needs to be forgiven and lead us in the way of everlasting love. Protect and show Your everlasting love for the soldiers, firefighters, law enforcement officers, emergency medical personnel, and their families and loved ones as they protect us. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of yesterday be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

CO-AUTHOR OF SENATE BILL 16

On motion of Senator Averitt, Senator West will be shown as Co-author of SB 16.

CO-AUTHOR OF SENATE BILL 66

On motion of Senator Nelson, Senator Lucio will be shown as Co-author of SB 66.

CSSB 855 as amended was passed to engrossment by the following vote: Yeas 22, Nays 9.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Harris, Hinojosa, Lucio, Nichols, Seliger, Shapiro, Shapleigh, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Fraser, Hegar, Huffman, Jackson, Nelson, Ogden, Patrick, Uresti, Van de Putte.

(President in Chair)

SENATE BILL ON FIRST READING

The following bill was introduced, read first time, and referred to the committee indicated:

SB 2515 by Williams

Relating to the administration, powers and duties, operations, and financing of The Woodlands Township.

To Committee on Intergovernmental Relations.

SENATE BILL 1098 REREFERRED

Senator Carona submitted a Motion In Writing requesting that SB 1098 be withdrawn from the Committee on Transportation and Homeland Security and rereferred to the Committee on Health and Human Services.

The Motion In Writing prevailed without objection.

SESSION TO CONSIDER EXECUTIVE APPOINTMENTS

The President announced the time had arrived to consider executive appointments to agencies, boards, and commissions. Notice of submission of these names for consideration was given Monday, April 6, 2009, by Senator Jackson.

Senator Jackson moved confirmation of the nominees reported Monday by the Committee on Nominations.

The President asked if there were requests to sever nominees.

There were no requests offered.

NOMINEES CONFIRMED

The following nominees, as reported by the Committee on Nominations, were confirmed by the following vote: Yeas 31, Nays 0.

Members, Commission on Jail Standards: Irene A. Armendariz, El Paso County; Donna Sue Klaeger, Burnet County; Jerry W. Lowry, Montgomery County: Larry S. May, Nolan County; Gary Painter, Midland County; Tam Terry, Carson County.

Member, Correctional Managed Health Care Committee: James Dale Griffin, M.D., Dallas County.

Members, Crime Stoppers Advisory Council: Nelda L. Garcia, Jim Wells County; Jorge E. Gaytan, Harris County; Emerson Frederick Lane, Jr., Jefferson County.

Members, Board of Trustees, Employees Retirement System of Texas: Cydney C. Donnell, Gillespie County; Donald E. Wood, Ector County.

Members, Judicial Compensation Commission: Ramiro A. Galindo. Brazos County; Tommy Steve "Tom" Harwell, El Paso County; Harold Jenkins, Dallas County; Patrick W. Mizell, Harris County; Paul Bane Phillippi, Bastrop County; Wanda Chandler Rohm, Bexar County; Linda B. Russell, Galveston County; Michael L. Slack, Travis County; William M. Strawn, Travis County.

Members, Produce Recovery Fund Board: Ralph Diaz, Nueces County; Ly H. Nguyen, Fort Bend County; Bernie Thiel, Jr., Lubbock County; Byron Edward White, Tarrant County.

Members, Product Development and Small Business Incubator Board: Michael Arlen Davis, Jr., Travis County; Neil A. Iscoe, Travis County; David Russell Margrave, Bexar County.

Members, State Board for Educator Certification: Michael Acuff, Tarrant County; Sandra Bridges, Rockwall County; Stefani Danielle "Stef" Carter, Dallas County.

Members, State Commission on Judicial Conduct: Tom Alan Cunningham, Harris County; William C. Lawrence, Denton County; Karry Kay Matson, Williamson County; Janet P. Patterson, Travis County; Wanda Janelle Shepard, Parker County.

Members, Texas Board of Criminal Justice: Oliver John Bell, Llano County; John "Eric" Gambrell, Dallas County; Janice Harris Lord, Tarrant County; R. Terrell McCombs, Bexar County; J. David Nelson, Lubbock County; Carmen Villanueva-Hiles, Hidalgo County.

Members, Texas Board of Professional Land Surveying: Jon Edwin Hodde, Washington County; David Gregory Smyth, Uvalde County.

Members, Texas Judicial Council: Keely Appleton, Tarrant County; Richard Vernon Battle, Travis County; Fred E. Davis, Travis County, Richard "Rick" Figueroa, Fort Bend County; Allyson N. Ho, Dallas County; Henry Nuss, Nueces County.

NOTICE GIVEN FOR LOCAL AND UNCONTESTED CALENDAR

Senator Williams announced that a Local and Uncontested Calendar had been furnished to each Member of the Senate. He then gave notice that the Local and Uncontested Calendar Session would be held at 8:00 a.m. tomorrow and that all bills and resolutions would be considered on second and third reading in the order in which they were listed.

SENATE RULE 11.13 SUSPENDED (Consideration of Bills in Committees)

On motion of Senator Williams and by unanimous consent, Senate Rule 11.13 was suspended to grant all committees permission to meet while the Senate is meeting tomorrow.

SENATE JOURNAL

EIGHTY-FIRST LEGISLATURE — REGULAR SESSION

AUSTIN, TEXAS

PROCEEDINGS

SIXTH DAY

(Monday, February 2, 2009)

The Senate met at 1:34 p.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

The President announced that a quorum of the Senate was present.

Don Garner, State Director, Capitol Ministries, offered the invocation as follows:

Father, I thank You today for the gracious provision You have made for the leadership of our state through the elected officials present here today. I ask that You would grant them a disposition of humble submission to Your sovereign authority and that in their submission they would find their own authority strengthened and established, that as they acknowledge You as the God of all wisdom, they might enjoy a keen sense of discernment today, that as they recognize You as the one who controls all things, they would experience a deep and abiding peace, that as they seek Your favor, they might find favor with their constituents and colleagues, and most of all, Father, manifest Yourself in a very real way to each of them, as You have done so in my life. I pray this in the name of my savior, Jesus Christ. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of Wednesday, January 28, 2009, be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

CO-AUTHOR OF SENATE BILL 21

On motion of Senator Zaffirini, Senator Shapleigh will be shown as Co-author of SB 21.

CO-AUTHOR OF SENATE BILL 91

On motion of Senator Van de Putte, Senator Davis will be shown as Co-author of SB 91.

Linda B. Russell - Kemah

Appointment Date: April 24, 2008 Expiration Date: February 1, 2013

Michael L. Slack - Austin

Appointment Date: April 24, 2008 Expiration Date: February 1, 2011

William M. Strawn - Austin

Appointment Date: April 24, 2008 Expiration Date: February 1, 2009

Betsy Whitaker - Dallas

Appointment Date: April 24, 2008 Expiration Date: February 1, 2009

JUDICIAL CONDUCT, STATE COMMISSION ON

William C. Lawrence - Highland Village Appointment Date: November 21, 2007 Expiration Date: November 19, 2009

Karry Kay Matson - Georgetown Appointment Date: May 8, 2008 Expiration Date: November 19, 2013

Wanda Janelle Shepard - Weatherford Appointment Date: November 21, 2007 Expiration Date: November 19, 2011

JUDICIAL COUNCIL, TEXAS

Keely Appleton - Arlington

Appointment Date: February 27, 2008

Expiration Date: June 30, 2011

Richard Vernon Battle - Lakeway Appointment Date: February 27, 2008 Expiration Date: June 30, 2009

Fred E. Davis - Austin

Appointment Date: September 10, 2008

Expiration Date: June 30, 2011

Richard "Rick" Figueroa - Sugar Land Appointment Date: May 16, 2008 Expiration Date: June 30, 2013

Allyson N. Ho - Dallas

Appointment Date: May 16, 2008 Expiration Date: June 30, 2013

Henry Nuss - Corpus Christi Appointment Date: May 16, 2008 Expiration Date: June 30, 2009

SENATE JOURNAL

EIGHTY-FIRST LEGISLATURE — REGULAR SESSION

AUSTIN, TEXAS

PROCEEDINGS

THIRTY-FIFTH DAY

(Wednesday, April 8, 2009)

The Senate met at 11:08 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

The President announced that a quorum of the Senate was present.

Chaplain Brett Shayler, Weatherford College Fire Academy, Weatherford, offered the invocation as follows:

Heavenly Father, we ask for wisdom and strength in all of our tasks that we seek this day. Being experienced in the ways of the world, we all strive to gain more knowledge and to understand the spirit in our lives and allow the spirit that moves between us and calls us by a secret whispering in our hearts to give all that we can of love and devotion to our fellow man. Search us and know our hearts and know our anxieties and see if there is any wicked way in us that needs to be forgiven and lead us in the way of everlasting love. Protect and show Your everlasting love for the soldiers, firefighters, law enforcement officers, emergency medical personnel, and their families and loved ones as they protect us. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of yesterday be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

CO-AUTHOR OF SENATE BILL 16

On motion of Senator Averitt, Senator West will be shown as Co-author of SB 16.

CO-AUTHOR OF SENATE BILL 66

On motion of Senator Nelson, Senator Lucio will be shown as Co-author of SB 66.

CSSB 855 as amended was passed to engrossment by the following vote: Yeas 22, Nays 9.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Harris, Hinojosa, Lucio, Nichols, Seliger, Shapiro, Shapleigh, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Fraser, Hegar, Huffman, Jackson, Nelson, Ogden, Patrick, Uresti, Van de Putte.

(President in Chair)

SENATE BILL ON FIRST READING

The following bill was introduced, read first time, and referred to the committee indicated:

SB 2515 by Williams

Relating to the administration, powers and duties, operations, and financing of The Woodlands Township.

To Committee on Intergovernmental Relations.

SENATE BILL 1098 REREFERRED

Senator Carona submitted a Motion In Writing requesting that SB 1098 be withdrawn from the Committee on Transportation and Homeland Security and rereferred to the Committee on Health and Human Services.

The Motion In Writing prevailed without objection.

SESSION TO CONSIDER EXECUTIVE APPOINTMENTS

The President announced the time had arrived to consider executive appointments to agencies, boards, and commissions. Notice of submission of these names for consideration was given Monday, April 6, 2009, by Senator Jackson.

Senator Jackson moved confirmation of the nominees reported Monday by the Committee on Nominations.

The President asked if there were requests to sever nominees.

There were no requests offered.

NOMINEES CONFIRMED

The following nominees, as reported by the Committee on Nominations, were confirmed by the following vote: Yeas 31, Nays 0.

Members, Commission on Jail Standards: Irene A. Armendariz, El Paso County; Donna Sue Klaeger, Burnet County; Jerry W. Lowry, Montgomery County: Larry S. May, Nolan County; Gary Painter, Midland County; Tam Terry, Carson County.

Member, Correctional Managed Health Care Committee: James Dale Griffin, M.D., Dallas County.

Members, Crime Stoppers Advisory Council: Nelda L. Garcia, Jim Wells County; Jorge E. Gaytan, Harris County; Emerson Frederick Lane, Jr., Jefferson County.

Members, Board of Trustees, Employees Retirement System of Texas: Cydney C. Donnell, Gillespie County; Donald E. Wood, Ector County.

Members, Judicial Compensation Commission: Ramiro A. Galindo, Brazos County; Tommy Steve "Tom" Harwell, El Paso County; Harold Jenkins, Dallas County; Patrick W. Mizell, Harris County; Paul Bane Phillippi, Bastrop County; Wanda Chandler Rohm, Bexar County; Linda B. Russell, Galveston County; Michael L. Slack, Travis County; William M. Strawn, Travis County.

Members, Produce Recovery Fund Board: Ralph Diaz, Nueces County; Ly H. Nguyen, Fort Bend County; Bernie Thiel, Jr., Lubbock County; Byron Edward White, Tarrant County.

Members, Product Development and Small Business Incubator Board: Michael Arlen Davis, Jr., Travis County; Neil A. Iscoe, Travis County; David Russell Margrave, Bexar County.

Members, State Board for Educator Certification: Michael Acuff, Tarrant County; Sandra Bridges, Rockwall County; Stefani Danielle "Stef" Carter, Dallas County.

Members, State Commission on Judicial Conduct: Tom Alan Cunningham, Harris County; William C. Lawrence, Denton County; Karry Kay Matson, Williamson County; Janet P. Patterson, Travis County; Wanda Janelle Shepard, Parker County.

Members, Texas Board of Criminal Justice: Oliver John Bell, Llano County; John "Eric" Gambrell, Dallas County; Janice Harris Lord, Tarrant County; R. Terrell McCombs, Bexar County; J. David Nelson, Lubbock County; Carmen Villanueva-Hiles, Hidalgo County.

Members, Texas Board of Professional Land Surveying: Jon Edwin Hodde, Washington County; David Gregory Smyth, Uvalde County.

Members, Texas Judicial Council: Keely Appleton, Tarrant County; Richard Vernon Battle, Travis County; Fred E. Davis, Travis County, Richard "Rick" Figueroa, Fort Bend County; Allyson N. Ho, Dallas County; Henry Nuss, Nueces County.

NOTICE GIVEN FOR LOCAL AND UNCONTESTED CALENDAR

Senator Williams announced that a Local and Uncontested Calendar had been furnished to each Member of the Senate. He then gave notice that the Local and Uncontested Calendar Session would be held at 8:00 a.m. tomorrow and that all bills and resolutions would be considered on second and third reading in the order in which they were listed.

SENATE RULE 11.13 SUSPENDED (Consideration of Bills in Committees)

On motion of Senator Williams and by unanimous consent, Senate Rule 11.13 was suspended to grant all committees permission to meet while the Senate is meeting tomorrow.

SENATE JOURNAL

EIGHTY-FIRST LEGISLATURE — REGULAR SESSION

AUSTIN, TEXAS

PROCEEDINGS

FORTY-SIXTH DAY

(Tuesday, April 28, 2009)

The Senate met at 11:09 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

The President announced that a quorum of the Senate was present.

The Reverend Dr. Thomas W. Estes, Central Presbyterian Church, Austin, offered the invocation as follows:

Gracious God, source of every good and perfect gift, we thank You for the challenge of public service and for the trust invested in this body. By what we say and do help us to make a positive difference for all of Your people whatever their condition. May we be thoughtful in our words, sound in our leadership, and brave in our decision making. Hear every sincere and hope-filled prayer we pray. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of yesterday be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

CO-AUTHORS OF SENATE BILL 20

On motion of Senator Williams, Senators Patrick and Shapleigh will be shown as Co-authors of SB 20.

CO-AUTHOR OF SENATE BILL 1405

On motion of Senator Shapleigh, Senator Watson will be shown as Co-author of SB 1405.

CO-AUTHOR OF SENATE BILL 1406

On motion of Senator Shapleigh, Senator Watson will be shown as Co-author of SB 1406.

CO-SPONSOR OF HOUSE BILL 3113

On motion of Senator Lucio, Senator Van de Putte will be shown as Co-sponsor of HB 3113.

MESSAGES FROM THE GOVERNOR

The following Messages from the Governor were read and were referred to the Committee on Nominations:

Austin, Texas April 27, 2009

TO THE SENATE OF THE EIGHTY-FIRST LEGISLATURE, REGULAR SESSION:

I ask the advice, consent and confirmation of the Senate with respect to the following appointments:

To be a member of the Finance Commission of Texas for a term to expire February 1, 2014:

Lori B. McCool

Boerne, Texas

(Ms. McCool is replacing Stanley Rosenberg of San Antonio who resigned)

To be a member of the State Commission on Judicial Conduct for a term to expire November 19, 2011:

Patti H. Johnson

Canyon Lake, Texas

(Ms. Johnson is replacing Connie de la Garza of Harlingen who resigned)

To be a member of the Crime Stoppers Advisory Council for a term to expire September 1, 2009:

William R. McDaniel

Montgomery, Texas

(Mr. McDaniel is replacing Brian Thomas of Amarillo who resigned)

To be a member of the Texas State Technical College System Board of Regents for a term to expire August 31, 2013:

Ellis M. Skinner II

Spicewood, Texas

(Mr. Skinner is replacing Cesar Maldonado of Harlingen who resigned)

To be members of the Produce Recovery Fund Board for terms to expire January 31, 2015:

Doyle "Neal" Newsom III

Plains, Texas

(replacing Joyce Obst of Alamo whose term expired)

Ly H. Nguyen

Sugar Land, Texas

(Ms. Nguyen is being reappointed)

To be members of the Product Development and Small Business Incubator Board for terms to expire as indicated:

SENATE JOURNAL

EIGHTY-FIRST LEGISLATURE — REGULAR SESSION

AUSTIN, TEXAS

PROCEEDINGS

FIFTY-SEVENTH DAY

(Wednesday, May 13, 2009)

The Senate met at 11:09 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

The President announced that a quorum of the Senate was present.

The Reverend Keith Born, Immanuel Lutheran Church, Pflugerville, offered the invocation as follows:

Dear heavenly Father, bless these men and women of the Senate Chamber of Texas and all of our elected leaders so that in their debates and deliberations concerns are addressed and needs are met for all the people of our state. Strengthen them in their efforts and enable them as well as all of us to make ourselves available to opportunities for service to others. Today, I offer special prayers for Representative Edmund Kuempel, guide the medical personnel caring for him and bring him back to his family and his vocation healthy and whole. I offer this prayer in Your most holy name. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of yesterday be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

CO-AUTHOR OF SENATE BILL 1317

On motion of Senator Wentworth, Senator Lucio will be shown as Co-author of SB 1317.

CO-AUTHOR OF SENATE BILL 2469

On motion of Senator Hinojosa, Senator Lucio will be shown as Co-author of SB 2469.

HB 3316 to Committee on Criminal Justice.

HB 3477 to Committee on Finance.

HB 3499 to Committee on Criminal Justice.

HB 3621 to Committee on Transportation and Homeland Security.

HB 3634 to Committee on State Affairs.

HB 3670 to Committee on Administration.

HB 3695 to Committee on Natural Resources.

HB 4037 to Committee on Criminal Justice.

HB 4360 to Committee on Economic Development.

HJR 14 to Committee on State Affairs.

HJR 83 to Committee on Finance.

HJR 85 to Committee on Intergovernmental Relations.

HJR 102 to Committee on Natural Resources.

HJR 127 to Committee on State Affairs.

HJR 132 to Subcommittee on Base Realignment and Closure.

SESSION TO CONSIDER EXECUTIVE APPOINTMENTS

The President announced the time had arrived to consider executive appointments to agencies, boards, and commissions. Notice of submission of these names for consideration was given yesterday by Senator Jackson.

Senator Jackson moved confirmation of the nominees reported yesterday by the Committee on Nominations.

The President asked if there were requests to sever nominees.

Senator Whitmire requested the following nominee be severed:

Member, Board of Pardons and Paroles: Shanda Gillaspie Perkins, Tarrant County.

The request was granted.

NOMINEES CONFIRMED

The following nominees, not severed and reported yesterday by the Committee on Nominations, were confirmed by the following vote: Yeas 31. Nays 0.

Members, Automobile Burglary and Theft Prevention Authority Linda W Kinney, Hays County; Kenneth R. Ross, Harris County: Mark H. Wilson, Hill County; Margaret "Jerry" Wright, El Paso County.

Members, Board of Pardons and Paroles: Juanita M. Gonzalez, Williamson County; Thomas A. Leeper, Walker County; Rissie L. Owens, Walker County.

Members, Council on Cardiovascular Disease and Stroke: Pamela Ruth Wilson Akins, Travis County; Michael M. Hawkins, M.D., Travis County; Melbert Carl "Bob" Hillert, Jr., M.D., Dallas County; Sue Pope, Montgomery County; Thomas E. Tenner, Jr., Ph.D., Lubbock County; Ann Quinn Todd, Harris County; Louis West, Williamson County; Clyde W. Yancy, M.D., Dallas County.

Members, Council on Sex Offender Treatment: Frederick Liles Arnold, Collin County; Ronnie Ann Fanning, McLennan County; Joseph Richard Gutheinz, Jr. J.D. Harris County; Alida S. Hernandez, Hidalgo County; Holly A. Miller, Montgomery County; Dan Powers, Denton County.

Member, Crime Stoppers Advisory Council: William R. McDaniel. Montgomery County.

Member, Finance Commission of Texas: Lori B. McCool, Kendall County.

Members, Board, Office of Rural Community Affairs: Dora G. Alcalá, Val Verde County; David Richey Alders, Nacagdoches County; Woody Anderson, Mitchell County; Evelyn Maxine Plaster "Mackie" Bobo, Grimes County; Charles Norman Butts, Sr., Lampasas County; Nina Remelle Marlow Farrar, Foard County; Charles W. Graham, D.V.M., Bastrop County; Wallace G. Klussmann, Llano County; Patrick Lee Wallace, Henderson County.

Members, Private Sector Prison Industries Oversight Authority: Sarah Abraham. Fort Bend County; Elaine Anne Boatright, Bastrop County; Burnis Brazil, Fort Bend County; S. Roxanne Carter, Randall County; Randall R. Henderson, Travis County. Jeffrey R. LaBroski, Fort Bend County; Rigoberto Villarreal, Hidalgo County.

Members, Produce Recovery Fund Board: Doyle "Neal" Newsom III. Yoakum County; Ly H. Nguyen, Fort Bend County.

Members, Product Development and Small Business Incubator Board: Guy K. Diedrich, Travis County; Dan Hanson, Dallas County; Paul C. Maxwell. El Paso County; Harvey Rosenblum, Dallas County.

Members, State Board of Dental Examiners: Steven J. Austin, D.D.S., Potter County; Mary Lynn Baty, Harris County: William R. Birdwell, Brazos County: Maxwell D. Finn, Dallas County; Alicia Grant, Collin County: Whimey Hyde, Midland County; Rodolfo G. Ramos, Jr., D.D.S., Harris County; Jerry Romero, El Paso County; Arthur Troilo III, Travis County.

Member, State Commission on Judicial Conduct: Patti Hutton Johnson, Comal County.

Members, Texas Appraiser Licensing and Certification Board: Walker Rankin Beard, El Paso County; Robert Del "Rob" Davis, Jr., Tarrant County; Luis F. De La Garza, Jr., Webb County; Danny R. Perkins, Harris County; James B. Ratliff, Dallas County; Clinton P. Sayers, Travis County; Bill F. Schneider, Travis County; Donna Lee Walz, Lubbock County.

Members, Texas Board of Architectural Examiners: Charles H. "Chuck" Anastos, Nueces County; Corbett "Chase" Bearden, Travis County; H. L. Bert Mijares, Jr., El Paso County; Brandon Pinson, Midland County; Diane Steinbrueck, Hays County; Alfred Vidaurri, Jr., Parker County.

Members, Texas Board of Physical Therapy Examiners: Frank Wingfield Bryan, Jr., Travis County; Karen L. Gordon, Calhoun County; Kevin Lindsey. Hidalgo County; Rene Pena, El Paso County; Melinda A. Rodriguez. Bexar County. Shari C. Waldie, Gillespie County.

Appendix S

STATE COMMISSION ON JUDICIAL CONDUCT 2 3 5 INQUIRY CONCERNING A JUDGE, NO. 96 6 7 HONORABLE SHAROW KELLER PRESIDING JUDGE, COURT OF CRIMINAL APPEALS 8 AUSTIN, TRAVIS COUNTY, TEXAS 9 10 OBJECTIONS HEARING 12 13 JUNE 18, 2010 14 15 BE IT REMORGERED that on this the 18th day of June, 18 17 2010, between 9:00 a.m. and 2:02 p.m., the above-entitled matter came for hearing at the John H. Reagan Building, 18 105 West 15th Street, Austin, Texas, before the State 20 Commission on Judicial Conduct; and the following 21 proceedings were reported by Renea Seggern, Certified 22 Shorthand Reporter. 23 24 25

BEFORE THE

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APPEARANCES
       COMMISSION MEMBERS:
 3
            Honorable Jorge C. Rangel, Chair
            Honorable Jan P. Patterson, Vice Chair
            Honorable Janelle Shepard, Secretary
            Honorable Sid Harle
 5
            Honorable Ann Appling Bradford
            Honorable Michael R. Fields
            Honorable Tom Cunningham
            Honorable William "Bill" Lawrence
 7
            Monorable Karry K. Matson
            Honorable Patti H. Johnson
 8
            Honorable Joel P. Baker
            Honorable Edward J. Spillane, III
       SPECIAL COUNSEL FOR THE EXAMINERS/COMMISSION:
10
            Mr. John J. McKetta, III
11
            Ms. Michelle Alcala
12
            GRAVES, DOUGHERTY, HEARON & MOODY, P.C.
            401 Congress Avenue, Suite 2200
13
            Austin, Texas 78701
            (512) 480-5716
14
       EXAMINER:
15
            Ms. Seams Willing
18
            Executive Director/Examiner
17
            STATE COMMISSION ON JUDICIAL CONDUCT
            P.O. Box 12265
18
            Austin, Texas 78711
            (512) 463-7769
19
       FOR THE RESPONDENT JUDGE SHARON KELLER:
20
            Mr. Charles Babcock
21
            Mr. Kurt Schwarz
            JACKSON WALKER, L.L.P
22
            1401 McKinney, Suite 1900
            Houston, Texas 77010
(713) 752-4200
23
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PROCEEDINGS CHAIRMAN RANGEL: Good morning and welcome. 3 My name is Jorge Rangel, and I am the Chair of the State Commission on Judicial Conduct. I hereby convene this Objections Rearing in the Inquiry Concerning a Judge, Number 96, Honorable Sharon Keller, Presiding Judge, Court of Criminal Appeals, Austin, Travis County, Texas. At this time, I will ask the members of the 9 Commission to introduce themselves for the record. 10 COMMISSIONER CUMNINGHAM: Good morning. name is Tom Cunningham. I am a lawyer from Houston, 11 12 Texas. 13 COMPLISSIONER JOHNSON: Good morning. I'm Patti Johnson. I'm a public member from Canyon Lake. 14 15 COMMISSIONER MATSON: Good morning. I'm 16 Karry Matson from Georgetown. I'm a public member. 17 CONCISSIONER SPILLAME: Good morning. My 18 name is Ed Spillane, and I'm a municipal court judge in 19 20 COMMISSIONER SHEPARD: Good morning, I'm 21 Janelle Shepard, public member from Weatherford. COMMISSIONER BAKER: Good morning. I'm 22 23 Joel Baker. I'm a Smith County judge.

name is Bill Lawrence, public member from Righland

CONMISSIONER LAWRENCE: Good morning. My

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Village. 1 2 COMMISSIONER BRADFORD: Good morning. I'm 3 Ann Bradford. I'm a public member from Midland. COMMISSIONER HARLE: Good morning, Counsel. Chief. My name is Sid Harle. I'm a district judge from San Antonio. COMMISSIONER PATTERSON: Good morning, Counsel, Commission. I'm Jan Patterson, Justice Third a Court of Appeals here in Austin. Welcome. 9 10 CHAIRMAN RANGEL: Counsel, at this time 11 will you please introduce yourselves for the record. MR. MCERTTA: Your Honor, on behalf of the 12 Examiner, I am Mike McKetta, serving as special counsel 13 assisting Examiner Seana Willing. 14 15 MS. WILLING: I'm Examiner Seana Willing. MR. BABCOCK: Representing Judge Keller. 16 17 Charles Babcock with Jackson Walker. With me is Kurt Schwarz and Amanda Patrick. 18 CHAIRMAN RANGEL: Counsel, welcome. Judge Keller, welcome. Examiner Willing, welcome. We are here 20 21 today, June 18th, 2010, to hear the party's objections to 22 the Special Master's Findings of Fact, which were entered 23 by the Special Master on January 19, 2010, after

conducting an evidentiary hearing on the issues presented

in the Notice of Formal Proceedings and in the answer

Appendix T



Charles L. Babcock (713) 752-4210 (Direct Dial) (713) 308-41.10 (Direct Fax) cbabcock@jw.com

June 13, 2010

Via Email bob.warneke@scjc.state.tx.us

Bob Warneke
State Commission on Judicial Conduct
P.O. Box 12265
Austin 78711-2265

Re: Qualifications of Certain of the Commissioners on the Commission On Judicial Conduct ("CJC")

Dear Bob.

Thank you for responding to Amanda Patrick's email regarding the expired terms of Commissioners Fields, Bradford and Lawrence. We are not certain that the constitutional provision you cite applies but, in any event, it has caused us to look more deeply at the qualifications of the Commissioners and we see some problems which we want to share with you before filing any formal motion so that you can give us your reaction.

The Texas Constitution provides that "a Commissioner of class (i) (Patterson), (ii) (Harle), (iii) (Cunningham and Rangel), (vii) (Fields), or (viii) (Baker) may not reside or hold a judgeship in the same court of appeals as another member of the Commission."

Judge Patterson is in the same court of appeals district (the Third) as Commissioners Matson (Williamson County) and Johnson (Comal County). Judge Fields is in the same court of appeals district (First and Fourteenth) as Commissioner Cunningham. Accordingly, it appears to us that Judges Patterson and Fields are disqualified under the constitution from sitting on the case.

Judge Fields suffers from another issue in that he has served more than six years as a commissioner and his term has expired. The specific provisions of the constitution provide that a commissioner can succeed himself if he or she has served less than three consecutive years (Section 1a (3)). Judge Fields does not qualify, although Commissioner Lawrence does. The constitution also specifically says that a commissioner's term shall be six years. Commissioner Fields exceeds that time period. Given these specific provisions we wonder how the more general provision you cited would save Commissioner Fields' continued service.

Ms. Bradford has not served six years yet, but has served more than three consecutive years.

It thus appears to us that Justice Patterson, Judge Fields and Ms. Bradford are disqualified from serving at the June 18, 2010 hearing or otherwise sitting in this matter. Would you give me

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your reaction to this by Tuesday if possible so we may decide whether to file a formal motion. Thank you so much.

I am sure this goes without saying but our raising this issue has nothing to do with Judge Keller's respect for the three individuals involved. She has a high regard for all three as do I. We do, however, want to make sure that this proceeding adheres to the strictures of the constitution.

Very truly yours.
Clash I. S.M.

Charles L. Babcock

CLB:hbt

cc: Sharon Keller

John J. (Mike) McKetta

Seana Willing